



# Department for International Trade

## **Provision of Temporary Workers and Associated Services**

Contracting Authority  
Provider  
Contract signature date

Department for International Trade  
Hays Specialist Recruitment Limited  
31/05/2022

**YPO 942: Managing Temporary and Permanent Recruitment**



**CALL-OFF TERMS AND CONDITIONS: Provision of Temporary Workers and Associated Services**

**(FOR USE BETWEEN THE CONTRACTING AUTHORITY AND THE PROVIDER)**

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## 1. INTERPRETATION

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

<b>“Additional Services”</b>	means additional services as may be requested by YPO and/or the Contracting Authority. This may include but is not limited to payroll support and temporary staff being made permanent. Details of Additional Services are provided within the specification
<b>“AWR” and “Agency Worker Regulations”</b>	means The Agency Worker Regulations 2010 (as amended from time to time)
<b>“Applicant”</b>	means a person whose curriculum vitae (“CV”) is submitted to the Contracting Authority by the Provider for consideration for a Permanent Placement or Temporary Placement
<b>"Approval" and "Approved"</b>	means the written consent of the Contracting Authority not to be unreasonably withheld or delayed
<b>“Authority”</b>	means YPO or any other Contracting Authority (if applicable)
<b>"Audit"</b>	means an audit carried out pursuant to Clause 34
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Contracting Authority
<b>“Base Location”</b>	means the location, specified by the Contracting Authority (in the Order Form) at which the majority of the Services shall be delivered
<b>"Basic Working and Employment Conditions"</b>	means those terms and conditions that are ordinarily included in the contracts of comparable employees or workers, as further defined by Regulation 5 of the AWR
<b>“Central Government Authority/Authorities”</b>	means the Crown and all bodies listed in Schedule 1 of the Public Contracts Regulations 2015 (whether or not they perform their functions on behalf of the Crown), but does not include Her Majesty in her private capacity
<b>“Change of Law”</b>	<p>means any change to or introduction of any Law coming into force or having effect after the Effective Date (and which could not have reasonably been anticipated by the Provider prior to the Effective Date) which:</p> <p>(i) relates specifically to the business or operations of the Contracting Authority only; or</p>



- (ii) relates specifically to the provision of the Contract Services

and which in either case, would require the Provider to incur demonstrable and material additional costs or expenses to enable it to continue providing the Contract Services in accordance with this Contract.

**"Commencement Date"**

means the date set out in the Order Form

**"Commercially Sensitive Information"**

means the Confidential Information listed in the Order Form comprised of information which is provided by the Provider and designated as commercially sensitive information by the Contracting Authority for the period set out in that Order Form

**"Conduct Regulations"**

shall mean the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended from time to time).

**"Confidential Information"**

means: -

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and

- (b) the Commercially Sensitive Information,

and does not include any information: -

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 29 (Confidential Information));
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

**"Contract"**

means the written agreement between the Contracting Authority and the Provider consisting of the Order Form and these clauses save that for the purposes of Clause Interpretation only, reference to Contract shall not include the Order Form



<b>"Contract Period"</b>	means the period from the Commencement Date to: - <ul style="list-style-type: none"><li>(a) the date of expiry set out in Clause 2 (Initial Contract Period); or</li><li>(b) following an extension pursuant to Clause 3 (Extension of Initial Contract Period), the date of expiry of the extended period; or</li><li>(c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract</li></ul>
<b>"Contract Price"</b>	means the price (exclusive of any applicable VAT), payable to the Provider by the Contracting Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Contract
<b>"Contracting Authority"</b>	means YPO and any Contracting Authority for the purposes of the Public Contracts Regulations 2015 and as identified in the Order Form
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular Authorities, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>"Data Loss Event"</b>	means any event that results, or may result, in unauthorised access to Personal Data under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data breach
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time



**“Data Protection Legislation” or “DPA”**

means:

- (a) the **General Data Protection Regulations 2016 (Regulation (EU) 2016/679)** as it forms part of the retained EU law by virtue of section 3 of the European Union (Withdrawal) Act 2018, and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419) (the **“UK GDPR”**),
- (b) the **Data Protection Act 2018** as amended from time to time; and
- (c) all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

**“Data Subject”**

has the meaning given to it in the Data Protection Legislation, as amended from time to time

**“Data Subject Access Request”**

means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data

**“Default”**

means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other

**“Deliverables”**

means those deliverables listed in the Order Form

**“Dispute Resolution Procedure”**

means the procedure for resolving disputes set out in Clause 56 of this Contract

**“Employee”**

shall mean an Applicant who has been retained by the Contracting Authority as a permanent employee

**“Environmental Information Regulations” or “EIR”**

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

**“Extension Period”**

means such period or periods as may be specified by the Contracting Authority pursuant to Clause 3

**“Fees”**

means the fees payable for the Services in accordance with Appendix 2 of the Contract

**“FOIA”**

means the Freedom of Information Act 2000 and any subordinate legislation made under this 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 or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: -

- (a) any industrial action occurring within the Provider's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);
- (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

**"Framework Agreement"**

means the framework agreement for the provision Services between YPO and the Provider

**"Fraud"**

means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud YPO, a Contracting Authority or the Contracting Authority

**"Good Industry Practice"**

means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Contracting Authority engaged in a similar type of undertaking under the same or similar circumstances

**"Improvement Notice"**

means a notice issued on the Provider to improve minor defaults of the Framework Agreement, the Contract or the Order Form instructing the Provider to improve or remedy any minor defaults in the provision of the Services

**"Information"**

has the meaning given under section 84 of the FOIA

**"Intellectual Property Rights" and "IPRs"**

means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any



country (including but not limited to the United Kingdom) and the right to sue for passing off

**"Invitation to Tender (ITT)"**

means the invitation to tender issued by YPO on 06/08/2019

**"Key Personnel"**

means any individual identified in the Order Form as being key personnel

**"Law"**

means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable right within the meaning of Section 4 of the EU Withdrawal Act 2018 as amended by the EU (Withdrawal Agreement) Act 2020, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Authority of which the Provider is bound to comply

**"Material Default"**

means any breach of clauses 10 (Conflict of Interest), 22 (Prevention of Bribery and Corruption), 26 (Health and Safety), 27 (Data Protection Act), 28 (Freedom of Information Act and Environmental Information Regulations), 34 (Records and Audit Access), 35 (Transfer and Sub-Contracting), 45 (Warranties and Representations)

**"Minor Default"**

means any breach of the Call-Off Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default

**"Month"**

means calendar month

**"Order" and "Order Form"**

means the order for Services submitted to the Provider by any Contracting Authority in accordance with the Ordering Procedures. The Order Form is at Appendix 1

**"Parent Company"**

means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company, and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term **"Holding Company"** shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

**"Party"**

means the Provider or the Contracting Authority

**"Permanent Placement"**

means a permanent position for an Applicant with a Contracting Authority

**"Placement"**

means a Permanent Placement and/or Temporary Placement, as appropriate



<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Legislation as amended from time to time
<b>"Pre-Existing IPR"</b>	means any Intellectual Property Rights vested in or licensed to the Contracting Authority or the Provider prior to or independent of the performance by the Contracting Authority or the Provider of their obligations under the Contract and in respect of the Contracting Authority includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
<b>"Premises"</b>	means the location where the Services are to be supplied, as set out in the Order Form
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly
<b>"Prohibited Act"</b>	<p>means any of the following acts, as described in the Bribery Act 2010:</p> <ul style="list-style-type: none"><li>(a) to directly or indirectly offer, promise or give any person working for or engaged by YPO or another Contracting Authority a financial or other advantage to:<ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li><li>(c) committing any offence:<ul style="list-style-type: none"><li>(i) under the Bribery Act;</li><li>(ii) under legislation creating offences concerning fraudulent acts;</li><li>(iii) at common law concerning fraudulent acts relating to this Call-off Contract; or</li><li>(iv) defrauding, attempting to defraud or conspiring to defraud YPO or any other Contracting Authority;</li></ul></li></ul>



- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK

**“Provider”**

means the person, firm or company or organisation whom executes this Contract and includes any employee, agent, servant or representative of the Provider or person employed by on or on behalf of the Provider to provide the Services. For the avoidance of doubt a Provider can be a managed service provider, recruitment outsourcing process provider, talent pool provider, vendor management provider or a recruitment provider

**“Provider’s Contract Manager”**

means the person appointed by the Provider to manage the Contract

**“Quality Standards”**

means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent Authority (and their successor Authorities), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form

**“Regulations”**

means the Public Contracts Regulations 2015 including any re-enactments

**“Replacement Provider”**

means any third-party Provider appointed by the Contracting Authority, to supply substantially similar Services, and which the Contracting Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract

**“Request for Information”**

shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “Request” shall apply)

**“Restricted Country”**

means any country which:

- a) is outside the United Kingdom;
- b) is not determined to be adequate pursuant to Article 45 of the UK GDPR (together “Restricted Countries”) as amended or replaced from time to time; and

has not been confirmed by the Contracting Authority as a non-Restricted Country in writing from time-to-time

**“Services”**

means the Services to be supplied as specified in the Order Form. For the avoidance of doubt where the



Contracting Authority requires any services with a technology aspect, the definition of Services will include Technology Services

<b>"Staff"</b>	means all persons employed by the Provider to perform the Services together with the Provider's servants, agents, and Sub-Contractors used in the performance of its obligations under the Contract (but excluding for the avoidance of doubt any Temporary Workers)
<b>"Staff Vetting Procedures"</b>	means the Contracting Authority's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive of confidential nature or the handling of information which is subject to any relevant security measure
<b>"Sub-Contractor"</b>	means a company performing the Services or part of the Services on behalf of the Provider
<b>"Sub-Processor"</b>	means any third Party appointed to Process Personal Data on behalf of the Provider related to this Call Off Contract
<b>"Technology Services"</b>	means any services provided by the Provider which contain a technology aspect, including the vendor management system or the talent pool technology
<b>"Temporary Placement"</b>	means a position for a Temporary Worker with a Contracting Authority
<b>"Temporary Worker"</b>	means an Applicant who has been selected by a Contracting Authority to provide services on a temporary basis, whether as an individual, limited company contractor or otherwise and who shall be supplied by the Provider to provide his/her services to a Contracting Authority pursuant to this Agreement. For the avoidance of doubt, Temporary Workers shall be under the direction, supervision and control of the Contracting Authority but the Provider shall remain responsible for the overall management of the Temporary Worker. They shall not be considered to be "Staff" under this Framework Agreement
<b>"Tender"</b>	means the document(s) submitted by the Provider to the Contracting Authority in response to the Contracting Authority's invitation to Providers for formal offers to supply it with the Services
<b>"Term"</b>	means the period commencing on the Commencement Date and ending on the expiry of the Initial Contract Period or any Extension Period or on earlier termination of this Call Off Contract
<b>"UK GDPR"</b>	has the meaning given in paragraph (a) of the definition of Data Protection Legislation
<b>"Variation"</b>	has the meaning given in Clause 37.1 of this Contract



<b>“Variation Procedure”</b>	means the procedure for varying this Contract as set out in Clause 31 of this Contract
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>“VMS”</b>	means the vendor management system supplied by the Provider in accordance with Section (B) of Appendix 5 (Specification of Requirements)
<b>"Working Days"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales
<b>“Year”</b>	means a calendar year
<b>“YPO”</b>	means YPO, any employee, agent servant or representative of YPO or any other public authority or person employed on behalf of YPO

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

- 
- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;
- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.8 Reference to any employees of the Provider shall be deemed to include the Provider's agents and Sub-Contractors unless expressly stated otherwise; and
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

## **2. INITIAL CONTRACT PERIOD**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

## **3. EXTENSION OF INITIAL CONTRACT PERIOD**



- 3.1 Subject to satisfactory performance of its obligations under the Contract by the Provider during the Initial Contract Period, the Contracting Authority may, by giving written notice to the Provider not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

#### **4. PROVIDERS STATUS**

- 4.1 At all times during the Contract Period the Provider shall be an independent Provider 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.

#### **5. PROVISION OF MANAGEMENT INFORMATION**

- 5.1 The Provider shall submit Management Information to the Contracting Authority in the format and frequency agreed by both Parties prior to the start of the Contract.
- 5.2 The Contracting Authority may make reasonable changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) Month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the Provider.

#### **6. CONTRACTING AUTHORITY OBLIGATIONS**

- 6.1 Save as otherwise expressly provided, the obligations of the Contracting Authority under the Contract are obligations of the Contracting Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Contracting Authority in any other capacity, nor shall the exercise by the Contracting Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Contracting Authority to the Provider.
- 6.2 The Contracting Authority will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.3 The Contracting Authority shall respond to any reasonable request for information from the Provider.
- 6.4 The Contracting Authority will assign an authorised representative who will liaise with the Provider's Contract Manager, to ensure both parties use reasonable endeavours to meet their contractual obligations.
- 6.5 The Contracting Authority shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).

#### **7. ENTIRE AGREEMENT**

- 7.1 Subject to the provisions of the Framework Agreement relating to Call-off Contracts, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.





- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
- 7.4.1 the Order Form;
  - 7.4.2 the clauses of the Contract;
  - 7.4.3 the appendices (with the exception of Appendix 12 (Tender));
  - 7.4.4 Appendix 12 (Tender) unless any part of Appendix 12 (Tender) offers a better commercial position for the Contracting Authority (as decided by the Contracting Authority, in its absolute discretion), in which case that aspect of the Tender will take precedence over the documents above; and
  - 7.4.5 any other document referred to in the clauses of the Contract
- 7.5 For the avoidance of doubt any terms that the Provider may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.
- 7.6 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

## **8. NOTICES**

- 8.1 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.
- 8.2 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 electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. 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 or item of electronic mail.
- 8.3 For the purposes of Clause 8.2, the address of each Party shall be:
- 8.3.1 For the Contracting Authority: the address set out in the Order Form.
  - 8.3.2 For the Provider: the address set out in the Framework Agreement.
- 8.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## **9. MISTAKES IN INFORMATION**

- 9.1 Subject to any inputs from the Contracting Authority, the Provider shall be responsible for the accuracy of all documentation and information supplied to the Contracting Authority by the Provider in connection with the supply of the Services (excluding for the avoidance of doubt any candidate CV's) and shall pay the Contracting Authority any reasonable additional costs occasioned directly by any discrepancies, errors or omissions therein.

## **10. CONFLICTS OF INTEREST**





- 10.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Contracting Authority under the provisions of the Contract.
- 10.2 The Provider shall promptly notify the Contracting Authority (and provide full particulars to the Contracting Authority) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
- 10.3 A Provider may be considered to have a conflict of interest, if the Provider:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Provider;
  - (b) Receives or has received any direct or indirect subsidy from another Provider;
  - (c) Has the same legal representative as another Provider;
  - (d) Has a relationship with another Provider, directly or through common third parties, that puts it in a position to influence another Provider regarding the provision of Services under this Contract;
  - (e) Has a close business or family relationship with an employee of a Contracting Authority involved in the tendering of this Contract.
- 10.4 The Contracting Authority reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Contracting Authority under the provisions of the Contract. The actions of the Contracting Authority 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 Contracting Authority.

## **11. PREVENTION OF FRAUD**

- 11.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Contracting Authority.
- 11.2 The Provider shall notify the Contracting Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 11.3 If the Provider or its Staff commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Contracting Authority, the Contracting Authority may: -
- 11.3.1 terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Contracting Authority resulting from the termination including the cost reasonably incurred by the Contracting Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period; and/or
  - 11.3.2 recover in full from the Provider any other loss sustained by the Contracting Authority in consequence of any breach of this clause.

## **12. SUPPLY OF THE SERVICES**



- 12.1 The Provider shall supply the Services to the Contracting Authority in accordance with the provisions of the Contract.
- 12.2 The Provider shall:
- 12.2.1 comply with all reasonable instructions given to the Provider and its Staff by the Contracting Authority in relation to the Services from time to time, including reasonable instructions to reschedule or alter the Services;
  - 12.2.2 immediately report to the Contracting Authority's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 10;
  - 12.2.3 co-operate with the Contracting Authority and the Contracting Authority's other professional advisers in relation to the Services as required by the Contracting Authority;
  - 12.2.4 comply with the Contracting Authority's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Provider in writing by the Contracting Authority including where applicable, but not limited to, such policies, procedures, codes and practices listed in Appendix 1 of the Order Form.
- 12.3 The Provider shall not:
- 12.3.1 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Contracting Authority shall thereby exist in relation to the Contract Services; or
  - 12.3.2 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Contracting Authority's written agreement; or
  - 12.3.3 without the prior written consent of the Contracting Authority, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or
  - 12.3.4 pledge the credit of the Contracting Authority in any way; or
  - 12.3.5 engage in any conduct which in the reasonable opinion of the Contracting Authority is prejudicial to the Contracting Authority;
  - 12.3.6 without the prior written consent of the Contracting Authority, introduce new methods or systems which materially impact on the provision of the Ordered Services.
- 12.4 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 12.5 The Provider accepts that the Contracting Authority shall have the right after consultation with the Provider to require the removal from involvement in the Contract Services of any person engaged in the performance of the Contract Services if in the Contracting Authority's reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract Services.
- 12.6 Where the Provider is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Provider's obligations under the Contract.



## 12.7 Variation of Contract Services

- 12.7.1 The Contracting Authority may request a variation to the Services at any time provided that such variation does not amount to a material change to the Order.
- 12.7.2 Any request by the Contracting Authority for a variation to the Services shall be by written notice to the Provider:
- (a) giving sufficient information for the Provider to assess the extent of the variation and any additional costs that may be incurred; and
  - (b) specifying the timeframe within which the Provider must respond to the request, which shall be reasonable,
  - (c) and the Provider shall respond to such request within such timeframe.
- 12.7.3 Any such variation agreed between the Contracting Authority and the Provider pursuant to Clause 37 shall not be valid unless in writing and signed by the Parties.
- 12.7.4 Furthermore, any written and signed variation between the Parties shall be appended to the Order Form.
- 12.7.5 In the event that the Provider and the Contracting Authority are unable to agree to a proposed variation including any change to the Contract Charges in connection with the requested variation to the Services:
- (a) the Contracting Authority may agree that the Provider should continue to perform its obligations under the Contract without the variation; or
  - (b) may terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter;
  - (c) Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

## 13. THE SERVICES

### 13.1 General

- 13.1.1 If the Provider is appointed by the Contracting Authority, the Provider shall provide the Services to the Contracting Authority in accordance with:
- (a) the provisions of this Framework Agreement and each Call-Off Contract;
  - (b) the Contracting Authority's requests from time to time.
- 13.1.2 The Provider shall perform the Services by the dates agreed in writing or if no date is agreed, in a timely manner to meet the reasonable requirements of the Contracting Authority.
- 13.1.3 The Provider may be required to work alongside a technology specific provider or HR specific provider in order to satisfy the requirements of the Contracting Authority. In

this situation, the Contracting Authority can select the technology or HR provider and will inform the Provider who this will be.

- 13.1.4 The Provider shall ensure that it maintains sufficient skilled and experienced personnel to provide the Services in accordance with Good Industry Practice and in a timely fashion. In addition, the Provider shall ensure that its employees are adequately trained and understand the implications and duties of all relevant employment legislation and treat all Applicants in a professional and appropriate manner, and fairly and equally.
- 13.1.5 The Contracting Authority may request the replacement of any of the Provider's staff at any time if in the reasonable opinion of the Contracting Authority, the performance of such person is unsatisfactory. The Provider agrees to promptly replace such staff as soon as reasonably practicable.
- 13.1.6 The Provider agrees to co-operate with a Contracting Authority in respect of the transfer of information in respect of each Placement vacancy, to ensure that the Applicant is suitable for such vacancy and to comply with its obligations under the Conduct Regulations.
- 13.1.7 The Provider shall always endeavour to ensure the suitability of an Applicant (including, without limitation, that each Applicant is skilled and competent with the appropriate qualifications, specialist knowledge and expertise for those tasks that they will be required to perform) and to maintain a high standard of service and integrity.
- 13.1.8 The Provider will not submit an Applicant's CV to a Contracting Authority for consideration in response to a specific Placement unless the Provider has previously met the Applicant, has expressed permission to submit their CV and screened the Applicant for fit with both the Contracting Authority's culture and the job specification. The Applicant's CV must, to the best of the Provider's knowledge and belief be complete, accurate and up to date.
- 13.1.9 The Provider shall not submit any Applicant's CV to a Contracting Authority on a speculative basis, unless previously agreed with the Contracting Authority.
- 13.1.10 The Provider shall fully brief all Applicants prior to the submission of their CV to a Contracting Authority.
- 13.1.11 During the Term of the Agreement the Provider shall be obliged:
  - (a) to comply properly with the requirements of all relevant legislation and agreements relating to payment of value added tax, corporation taxes, income tax and other taxes and charges levied in respect of the Contracting Authority's use of the Provider and the Fees payable to it under this Agreement and any tax liabilities in respect of Applicants and the Provider's Staff (where applicable);
  - (b) to perform the checks to establish and confirm that each Applicant and each of the Provider's Staff are entitled to live and work in the UK. Should any Applicant and / or Provider's Staff cease to be entitled to live and work in the UK at any time during the term of a Placement to a Contracting Authority, or during the provision of the Additional Services to a Contracting Authority, the Provider shall immediately notify the Contracting Authority of this fact and the Contracting Authority will be entitled to immediately terminate any relevant agreement in respect of that Applicant and / or the Provider's Staff; and



- (c) to provide proof of an Applicant's qualifications, training and experience requested by the Contracting Authority or required by law or any professional body for the performance of the Placement and / or the Additional Services.

13.1.12 The Provider shall use reasonable endeavours to procure that all the Provider's Staff, Sub-Contractors and the Sub-Contractors Staff shall:

- (a) attend such location as may be reasonably required for the proper provision of the Services;
- (b) observe the Contracting Authority's general rules and procedures with regard to the Placement including without limitation the Contracting Authority's policies in respect of: IT, health and safety at work, security, smoking, dress code, attendance and Code of Conduct. The Provider's Staff (as appropriate) will, on commencement of the Placement and / or the provision of the Additional Services (as appropriate), be given access to all of a Contracting Authority's relevant policies and guidelines so that they know the rules and procedures, which need to be followed;
- (c) notify the Contracting Authority so far as possible in advance of any periods over which they will be unable to attend the Placement and / or provide the Additional Services (as appropriate) due to the holiday, sickness, maternity leave, shared parental leave, paternity leave or other reason for non-attendance;
- (d) act in a civil, co-operative and non-discriminatory fashion towards a Contracting Authority's employees, clients and other business contacts; and
- (e) acknowledge and agree that a Contracting Authority shall at all times have the right without thereby being in breach of this Agreement or the Call-Off Contract, to require the Provider to remove immediately from a Contracting Authority's site any Staff and Temporary Workers engaged there on a Placement and / or any of the Provider's Staff who are providing Additional Services.

13.1.13 The Provider shall ensure that in putting forward an Applicant in response to a brief by a Contracting Authority, it adheres to the following:

- (a) The Provider must regularly re-interview the Applicant through face-to-face meetings and in any case before the Applicant begins a job-specific search.
- (b) If for clear logistical reasons (i.e. distances to travel), it is more difficult to meet the Applicant face to face, then a full and in-depth telephone interview must be conducted and every attempt to meet them face-to-face must be explored. If the Applicant has only been telephone interviewed the Provider must explain the reason for this to the hiring manager, together with reasons as to why the Provider thinks the Applicant is right for the role.
- (c) The Applicant should be fully briefed (verbally or by email) and provide written consent to the Provider to send their details for the specific brief referencing the job reference number and job title.

13.1.14 The Applicant's CV must be complete, accurate and up to date. Each Applicant should verify the accuracy and be provided a copy of the version of their CV that is

provided to the Contracting Authority prior to its submission to the Contracting Authority.

13.1.15 The Applicant's CV must be emailed to the relevant personnel at the Contracting Authority. The email shall be in the following format:

- (a) full candidate name, role applied for and line manager written clearly in the email;
- (b) the reasons why the Applicant is suitable for this specific brief in the text of the email; and
- (c) subject to the requirements of the Contracting Authority, with the written consent from the Applicant to be put forward for the relevant Placement attached or appended either as an email or a scanned PDF document and accurately dated.

13.1.16 The Provider must have a Sub-contractor management process in place and be able to evidence this process to YPO and/or Contracting Authorities if requested. As a minimum the Provider must comply with the Invitation to Tender specification and must:

- (a) look at the Sub-Contractors performance overall and look at feedback in relation to any Temporary Workers that were provided to a contracting authority;
- (b) meet with their Sub-Contractors at least twice a year and for Sub-Contractors that are used frequently a minimum of four times a year. The outcomes of these meetings must be reported to YPO on a quarterly basis;
- (c) be able to provide reports to YPO and/or Contracting Authorities regarding work within local communities;
- (d) check that each of their Sub-Contractors are compliant with all applicable legislation and regulations;
- (e) monitor all National Insurance (NI) Contributions, Agency Workers Regulations (AWR), Working Time Regulations (WTR), etc;
- (f) ensure that the terms and conditions between the Provider and each of the Sub-Contractors are consistent;
- (g) maintain a Sub-Contractor complaints policy and make sure that each Sub-Contractor is aware of the complaints policy. Information on any complaints received should be submitted to YPO and/or Contracting Authorities every six months.

## 13.2 Temporary Workers – Specific Terms

13.2.1 The Provider shall be responsible for providing the Temporary Workers to the Contracting Authority as requested in the Order Form and in accordance with this Contract, the Order Form and any Implementation Plan.

13.2.2 Both Parties shall ensure at all times that the Temporary Agency Workers are treated fairly and equally whether they are the Providers Temporary Worker or a Sub-Contractor's Temporary Worker. This includes but is not limited to being given equal opportunity to be put forward for or considered for a Placement if they have the relevant skills and experience.



- 13.2.3 The Provider shall, and ensure that its Sub-Contractors shall, at all times follow the Contracting Authority's requests and requirements in the Order Form and provide suitable Temporary Workers with relevant experience and skills set and as local to the Base Location mentioned in the Order Form. The Provider must perform checks to ensure that any Temporary Workers provided are appropriately qualified for the job role they are put forward for.
- 13.2.4 The Provider should, if applicable to their company model, seek Temporary Workers from both its own portfolio of Temporary Workers and its Sub-Contractor's portfolio of Temporary Workers to present to the Contracting Authority.
- 13.2.5 The Provider must at all times ensure that their Sub-Contractors are given a fair opportunity to provide the Services requested by the Contracting Authority.
- 13.2.6 The Contracting Authority agrees to verify (by signing) the Temporary Worker's timesheet to confirm the number of hours/days of services provided by the Temporary Worker to the Contracting Authority each week during the term of the Temporary Placement.
- 13.2.7 In the event that a Temporary Worker proves to be unsatisfactory and the Contracting Authority notifies the Provider within five (5) Working Days of the commencement of the Temporary Placement that this is the case, no charge will be made in relation to the Provider Fee provided that the Temporary Worker completes no more than two (2) days of work at the site and is asked by the Contracting Authority to leave the site or Base Location at the earliest reasonable time. At the Contracting Authority's request, the Provider will take immediate steps to source a replacement. The Provider will support the Contracting Authority in facilitating the removal of any Temporary Worker under this Clause.
- 13.2.8 Each Temporary Placement is terminable by the Contracting Authority at any time upon no notice for any reason upon the Contracting Authority's written notice if the relevant Temporary Worker:
- (a) has failed to work in accordance with the Contracting Authority's rules and regulations previously notified by the Contracting Authority to the Temporary Worker; or
  - (b) is guilty of misconduct; or
  - (c) fails to perform the services or Temporary Placement in a proper and effective manner; or
  - (d) becomes incapable of providing the services or Temporary Placement.
- 13.2.9 Unless otherwise agreed, the Contracting Authority shall be entitled to terminate any Temporary Placement upon written notice at any time and where reasonably practicable it shall give the Provider 1 week's prior written notice of the termination of a Temporary Placement. The Provider shall not be entitled to terminate a Temporary Placement during the term of the Placement for convenience, unless a notice period has been agreed in the Order Form for the relevant Temporary Worker. The Provider will procure that appropriate terms are in place with the Temporary Worker to ensure compliance with this term.
- 13.2.10 The Provider shall be wholly responsible for the payment to Temporary Workers of all fees, monies, expenses, remuneration, or other benefits including but not limited to: statutory maternity pay, shared parental pay, paternity pay, statutory sick pay and holiday pay payable to Temporary Workers and for all taxes (which it is statutorily liable to pay), National Insurance contributions, social security or other contributions, which may be payable, relating thereto or as a result of the receipt of any monies paid





or payable hereunder accruing on or after the commencement of the Term of this Agreement. The Provider shall indemnify and hold harmless YPO and the Contracting Authority for all costs incurred by the Contracting Authority as a result of any failure by the Provider to pay any such remuneration, pay, taxation (which it is statutorily liable to pay) and any deductions required by law anywhere in the world. For the avoidance of doubt, the Contracting Authority is responsible for providing a status determination to the Temporary Worker and the Provider (or relevant supply chain entity).

- 13.2.11 For the avoidance of doubt, Temporary Workers will be under the day to day supervision, direction and control of the Contracting Authority, however, the Provider warrants that it is wholly responsible for all obligations to Temporary Workers under the Pensions Act 2008, including but not limited to assessing whether or not the Temporary Worker is eligible to be auto-enrolled into a qualifying pension scheme, the duty to enrol and re-enrol Temporary Workers, to make the appropriate employer contributions and deduct the appropriate employee contributions as required by the Pensions Act 2008.
- 13.2.12 The Provider shall use its reasonable endeavours to ensure that Temporary Workers co-operate with the Contracting Authority and co-operates with the Contracting Authority's reasonable instructions. This includes but is not limited to as far as reasonably possible making sure that the Temporary Worker is aware that they must perform their duties in a competent manner, comply with the Contracting Authority's policies at all times and act in a professional manner whilst representing both the Provider and the Contracting Authority.
- 13.2.13 The Provider shall use all reasonable endeavours to ensure that all Temporary Workers provided to a Contracting Authority remain at all times the workers or contractors (as appropriate) of the Provider and do not become employees of the Contracting Authority and / or YPO except where this occurs as a result of an act or omission of the Contracting Authority, the Contracting Authority taking a Temporary Worker on as a permanent Employee or following the application of the TUPE Regulations.
- 13.2.14 For the avoidance of doubt, Temporary Workers shall be under the direction, supervision and Control of the Contracting Authority during their completion of the Placement, although the Provider will remain at all times responsible for the contractual relationship with the Temporary Worker including but not limited to the termination of their contract. The Provider will be responsible for the overall management of any Temporary Worker including but not limited to dealing with any complaints or concerns raised in relation to the Temporary Worker. The Provider agrees to keep the Contracting Authority informed of all such matters and provide them with a reasonable opportunity to make any relevant representations.
- 13.2.15 Both Parties shall ensure that the Temporary Workers are at all times insured under the relevant Parties own Employers Liability and Public Liability insurance policies whilst under the control, direction and instruction of each Party.
- 13.2.16 The Provider shall accordingly indemnify and hold each Contracting Authority and YPO harmless against all liabilities arising out of or in connection with clauses 13.2.10, 13.2.11 and 13.2.13. For the avoidance of doubt the Provider will not be liable to indemnify the Contracting Authority and YPO for any liabilities as a result of any acts or omissions of the Contracting Authority.
- 13.2.17 The Provider shall ensure that they and their Sub-Contractors obtain the consent of the Temporary Worker to hold Personal Data on them which can be shared with the Contracting Authority. All data must be held in accordance with Clause 27 and the Data Protection Act 2018. This data may include but is not limited to:

- (a) Name of Temporary Worker;





- (b) Date of Birth;
- (c) Home address;
- (d) National Insurance Number;
- (e) Employment History;
- (f) Training Records;
- (g) Confirmation that qualification and certificates have been checked;
- (h) Evidence of the Temporary Workers eligibility to work in the UK;
- (i) Confirmation that the Temporary Workers Driving Licence has been checked, if applicable for the role;
- (j) Confirmation that DBS has been carried out and checked;
- (k) Confirmation that references have been checked.

13.2.18 The Provider shall monitor all Temporary Worker Placement and notify the Contracting Authority when a Temporary Workers Placement is approaching 12 weeks in order for the Contracting Authority to review the Placement.

13.2.19 The Provider shall ensure that any contract entered into between the Provider or a Sub-contractor and a Temporary Worker provided to the Contracting Authority under this Contract does not include any form of exclusivity granted by the Temporary Worker to that Provider or Sub-Contractor.

### 13.3 Temporary Workers – Drivers (if applicable)

13.3.1 The Provider is responsible for any checks deemed necessary to ascertain the suitability of the drivers to fulfil the Temporary Placement with the Contracting Authority (e.g. the holding and validity of driving licences and/or any permissions or authorizations required to drive certain categories of vehicles) before they are put forward to the Contracting Authority for consideration for the Temporary Placement.

13.3.2 Any driver put forward by the Provider to the Contracting Authority is introduced on the understanding that they are deemed to be the employee of the Contracting Authority in relation to all purposes including the Transport Act 1968, Working Time Regulations 1998, and all other road transport, road traffic, driver's hours, and health and safety legislation ("**Driving Laws**").

13.3.3 The Contracting Authority must ensure that the driver complies with all Driving Laws, including holding valid licenses where applicable and must take proper steps in relation to the insurance, maintenance and safety of vehicles and effect all other necessary liability insurances.

13.3.4 The Contracting Authority shall assume control of the drivers' duties, health and safety, employer's obligations and liability, journeys and hours of work and all statutory duties including EU legislation in respect of driving licenses and tachographs.

13.3.5 The Contracting Authority shall be responsible for all fines and penalties incurred by the drivers, including speeding and parking fines.

13.3.6 The Contracting Authority must hold an operator's license where this is required.



13.3.7 The Provider will provide the drivers with written statements containing full details of the terms and conditions of engagement which must be signed, and a copy returned to the Contracting Authority for their records.

13.3.8 The Provider will pay the temporary driver's wages and account to HM Revenue & Customs and other government departments for all the necessary income tax and statutory deductions made.

#### 13.4 **Agency Worker Regulations**

13.4.1 Both Parties will ensure that they comply with all of their obligations under the AWR.

13.4.2 The Contracting Authority will provide the information requested by the Provider in accordance with The Conduct of Employment Agencies and Employment Business Regulations 2003, this includes but is not limited to estimated commencement date, duration of the Placement, job role, experience required.

13.4.3 Subject to a Contracting Authority providing the information requested by the Provider, it shall be the responsibility of the Provider to ensure that if the AWR applies to a Placement, the Temporary Worker receives the same Basic Working and Employment Conditions as the Temporary Worker would be entitled to, had such worker been recruited directly by the Contracting Authority. For the avoidance of doubt a Temporary Worker supplied via a limited company shall be treated as out of scope of AWR.

13.4.4 The Contracting Authority must ensure that a Temporary Worker is treated no less favourably to a worker in a comparable permanent role with regards to the amenities and facilities provided by the Contracting Authority.

13.4.5 The Provider:

(a) warrants and undertakes that it will not structure any Placements in a manner that prevents or attempts to prevent the Temporary Worker from being entitled to, or from continuing to be entitled to equivalent Basic Working and Employment Conditions or which is prohibited under the AWR; and

(b) shall notify the Contracting Authority in writing prior to the commencement of a Temporary Placement if the Temporary Worker has performed a Placement for the Contracting Authority within the previous 12 months.

13.4.6 The Provider shall request from a Contracting Authority information, or details of where it can locate information regarding the relevant employment vacancies and the collective facilities and amenities provided by the Contracting Authority, prior to the commencement of a Temporary Placement. It shall be the obligation of the Provider to notify each Temporary Worker how to access this information, or if in the view of a Contracting Authority this is not practically possible, to provide the Temporary Worker with such information.

13.4.7 The Contracting Authority will fulfil any request for information under this Clause 13 as soon as reasonably practicable.

13.4.8 In the event that a Temporary Worker makes a written request to the Provider for information in accordance with the AWR, the Provider shall compile a written statement setting out in sufficient detail the information necessary to comply with Regulation 16(2) of the AWR. It shall present such written statement to the Contracting Authority and obtain their written approval prior to providing the written statement to the Temporary Worker. The Provider shall ensure that the Contracting Authority has no less than 5 working days to review the draft written statement. If no



response has been provided by the Contracting Authority following such time period, the Provider shall re-issue the draft written statement to the Contracting Authority. If no response is provided by the Contracting Authority within 2 working days of the Provider re-issuing such draft statement, the Provider shall be entitled to submit the written statement to the Temporary Worker in order to comply with the 28-day time limit set out in Regulation 16 of the AWR.

- 13.4.9 The Provider shall indemnify a Contracting Authority in full from and against any liabilities suffered or incurred by a Contracting Authority as a result of the Provider's failure to comply with the AWR or in the event that a Temporary Worker is unfairly dismissed or subjected to any detriment by, or as a result of, any act or omission of the Provider. For the avoidance of doubt this clause will not apply where the Contracting Authority has failed to provide information requested by the Provider within a reasonable time or the information is inaccurate.
- 13.4.10 The Provider will support the Contracting Authority in completing the IR35 checks where applicable. For the avoidance of doubt, the Contracting Authority holds the legal responsibility to issue an Off-Payroll Working Rules (OPWR/IR35) status determination statement to the Temporary Worker and to the Provider (or relevant supply chain entity).
- 13.4.11 Notwithstanding anything under this Contract to the contrary, for the purposes of OPWR (IR35), the manner in which a Temporary Worker engaged by the Provider under a contract for services via a personal service company ("PSC"), provides the services during the assignment, shall not be under or subject to the supervision, direction or control of the Contracting Authority or Provider if the engagement is determined to be on an Outside IR35 basis by the Contracting Authority.

### 13.5 Information Requests

- 13.5.1 The Provider agrees and acknowledges that if it requires information from the Contracting Authority in order to ensure compliance with the AWR, it shall submit all such information requests to the Contracting Authority in accordance with the provisions of this Clause 13.5.
- 13.5.2 For a Temporary Placement that is scheduled to last for a period of 12 weeks or longer the Provider shall submit a questionnaire to the Contracting Authority within a reasonable time frame prior to the commencement of the Temporary Placement for completion by the Contracting Authority. Upon receipt of the completed questionnaire, the Provider shall be responsible for complying with the AWR.
- 13.5.3 For a Placement that, at the commencement of such placement is not anticipated to last for a period in excess of 12 weeks, but at any time during the placement the Provider is notified that the Placement will or may be extended beyond 12 weeks or would subsequently meet the 'qualifying period' in the AWR, the following shall apply:
  - (a) The Provider shall submit the questionnaire to the Contracting Authority for completion no later than the commencement of week 8 of the applicable Temporary Placement, or if such period has already passed, no later than 48 hours following notification of such extension. Upon receipt of the completed questionnaire, the Provider shall be responsible for complying with the AWR.
  - (b) If at any stage during a Temporary Placement the Provider wishes to request additional information from the Contracting Authority in order to determine its rights or obligations under the AWR, it shall notify the Contracting Authority in writing.



### 13.6 Permanent Employees – Specific Terms

- 13.6.1 The Provider shall be responsible for providing the Applicants to the Contracting Authority as requested in the Order Form and in accordance with this Contract, the Order Form and any Implementation Plan.
- 13.6.2 The Contracting Authority shall provide the job specification to the Provider, who will then present candidates to the Contracting Authority within the timescales specified by the Contracting Authority in the Order Form.
- 13.6.3 The Provider shall, and shall ensure that its Sub-Contractors shall, at all times follow the Contracting Authority's requests and requirements in the Order Form and provide suitable Applicants with relevant experience and skills set. The Provider must perform checks to ensure that any Applicants provided are appropriately qualified for the job role they are put forward for.
- 13.6.4 Pay rates will be provided to the Provider by the Contracting Authority and the Provider must discuss these with the Applicants.
- 13.6.5 The Provider should, if applicable to their company model, seek Applicants from both its own portfolio of potential Applicants and its Sub-Contractor's portfolio of potential Applicants to present to the Provider.
- 13.6.6 The Provider must at all times ensure that their Sub-Contractors are given a fair opportunity to provide the Services requested by the Contracting Authority.
- 13.6.7 The Provider shall ensure that they and their Sub-Contractors obtain the consent of the Applicant to hold Personal Data on them which can be shared with the Contracting Authority. All data must be held in accordance with Clause 27 and the Data Protection Act 2018. This data may include but is not limited to:
- (a) Name of the Applicant;
  - (b) Date of Birth;
  - (c) Home address;
  - (d) National Insurance Number;
  - (e) Employment History;
  - (f) Training Records;
  - (g) Confirmation that qualification and certificates have been checked;
  - (h) Evidence of the Applicants eligibility to work in the UK;
  - (i) Confirmation that the Applicants Driving Licence has been checked, if applicable for the role;
  - (j) Confirmation that DBS has been carried out and checked;
  - (k) Confirmation that references have been checked.
- 13.6.8 In the event that a Permanent Placement terminates (whether by expiry of notice or otherwise) within twelve (12) weeks of the date of commencement of the Permanent Placement, and provided:

- (a) The Contracting Authority notifies the Provider in writing of the termination of the Permanent Placement within 14 days of such termination; and
- (b) the termination is not due to redundancy or the Employee's ill health; and
- (c) nothing has materially changed with regards to the Employee's current or anticipated job role which would precipitate the Employee choosing to leave,

then the Provider shall endeavour to find a replacement at no extra cost to the Contracting Authority and, if a replacement cannot be found within a reasonable period of time as judged solely by the Contracting Authority, the Provider shall promptly refund a portion of the Fees paid by the Contracting Authority in respect of such Permanent Placement. The refund of the portion of the Fees due to the Contracting Authority shall be as per the refund scale in the Order Form.

13.6.9 In the event that the Contracting Authority rejects an Applicant for a Permanent Placement, or the Applicant rejects an offer of a Permanent Placement, and the Applicant is subsequently engaged by the same Contracting Authority for the same job reference number, the Contracting Authority shall pay the agreed Fees in full. If the Contracting Authority subsequently engages an Applicant for a Permanent Placement with a different job reference number, then no Fees shall be payable to the Provider unless the Provider can provide evidence that the Applicant has been engaged for the subsequent role directly as a result of the original introduction and not for example from the Applicant applying directly for the new role themselves.

13.6.10 Invoices submitted by the Provider to the Contracting Authority should be in arrears for the previous month and be submitted by a deadline advised to the Provider by the Contracting Authority.

### 13.7 Technology Services – specific terms (where applicable)

13.7.1 Without prejudice to Clause 13, in the event that the Provider supplies Technology Services to a Contracting Authority, the Provider shall use all reasonable endeavours to procure that all of the Provider's Staff who are engaged in the provision of the Technology Services:

- (a) Co-operate with the reasonable requests and instructions of the Contracting Authority in carrying out the Technology Services;
- (b) Attend such location as may be reasonably required for the proper provision of or for training regarding the Technology Services;
- (c) Have the necessary skills and competence and are properly trained with appropriate technical expertise in the provision of the Technology Services. This includes being able to provide comprehensive, thorough and accurate training to the Contracting Authority;
- (d) Keeps confidential any and all Confidential Information of the Contracting Authority both during and following the termination of the Technology Services; and
- (e) Contract on adequate written terms with the Provider to ensure their full compliance with the relevant terms of this Contract and the Framework Agreement.



13.7.2 The Provider must:

- (a) ensure that they maintain all appropriate licences and permissions required for the provision of the Technology Services and for the Contracting Authority to be able to use the Technology Services to their full potential;
- (b) ensure that the system being provided is able to work in conjunction with any current systems the Contracting Authority has;
- (c) ensure the system is able to be installed on both physical and/or virtual hardware and have a server and client application;
- (d) ensure the system is able to support different levels of access and permissions as required by the Contracting Authority;
- (e) support the transfer or conversion of any data to the new software;
- (f) be responsible for installing and configuring the system and work with the Contracting Authority to ensure successful implementation;
- (g) ensure that any updates that are released to any system being provided as part of the Technology Services are compatible with any current systems being supplied by the Provider and any existing programmes that the Provider has;
- (h) inform the Contracting Authority of any updates to any system a minimum of three (3) months prior to the update being released;
- (i) ensure minimal disruption to the Technology Services during the Contract Period;
- (j) carry out regular testing to ensure that the Technology Services and systems are performing correctly. Any issues that are identified must be reported to the Contracting Authority as soon as reasonably practicable and an agreed resolution and timeframe agreed between the Parties;
- (k) provide training as and when requested by the Contracting Authority, free of charge, in a variety of methods;
- (l) provide a 24-hour support system to the Contracting Authority for any technical support;
- (m) ensure that there are security systems in place;
- (n) ensure that the system comply with the DPA.

**13.8 Additional Services – specific terms**

13.8.1 In addition to a Contracting Authorities temporary recruitment requirement, a Contracting Authority is able to add on Additional Services that are within the requirements of the Framework Agreement, Contract and Invitation to Tender documents. These may be outlined in the initial Order Form and then added at any point during the life of the Contract.

13.8.2 The Provider is able to use sub-contractors to deliver the Additional Services. It is the responsibility of the Provider to manage any sub-contractor in line with the Framework Agreement and Contract.



- 13.8.3 Without prejudice to Clause 13, in the event that the Provider supplies Additional Services to a Contracting Authority, the Provider shall use all reasonable endeavours to procure that all of the Provider's Staff who are engaged in the provision of the Additional Services:
- (a) Co-operate with the reasonable requests and instructions of the Contracting Authority in carrying out the Additional Services;
  - (b) Attend such location as may be reasonably required for the proper provision of the Additional Services;
  - (c) Have the necessary skills and competence and are properly trained and experienced in the provision of the Additional Services;
  - (d) Keeps confidential any and all Confidential Information of the Contracting Authority both during and following the termination of the Additional services; and
  - (e) Contract on adequate written terms with the Provider to ensure their full compliance with the relevant terms of this Contract and the Framework Agreement.
- 13.8.4 The Provider shall use all reasonable endeavours to ensure that all of the Provider's Staff engaged in providing the Additional Services to a Contracting Authority remain at all times the employees, workers or contractors (as appropriate) of the Provider and do not become employees or workers of the Contracting Authority or YPO.
- 13.8.5 Provision of the Additional Services is terminable by the Contracting Authority at any time upon no notice for any reason upon the Contracting Authority's written request if any member of the Provider's Staff:
- (a) has failed to work in accordance with the Contracting Authority's rules and regulations previously notified by the Contracting Authority to the Provider; or
  - (b) is guilty of misconduct; or
  - (c) fails to perform the Additional Services in a proper and effective manner.
- 13.8.6 Unless otherwise agreed in the Order Form, the Contracting Authority shall be entitled to terminate the Additional Services upon 1 week's prior written notice at any time of the termination of the Additional Services.
- 13.8.7 The Provider shall be wholly responsible for the payment to the Provider's Staff of all fees, monies, expenses, remuneration, or other benefits including but not limited to: statutory maternity pay, shared parental pay, paternity pay, statutory sick pay and holiday pay and for all taxes (which it is statutorily liable to pay), National Insurance contributions, social security or other contributions, which may be payable, relating thereto or as a result of the receipt of any monies paid or payable hereunder accruing on or after the commencement of the Term of this Agreement.
- 13.8.8 For the avoidance of doubt, the Provider will remain at all times responsible for the overall management of the Provider's Staff who are providing the Additional Services to a Contracting Authority, including but not limited to any disciplinary or grievance matters. The Provider agrees to keep the Contracting Authority informed of all such matters and provide them with a reasonable opportunity to make any relevant representations.





- 13.8.9 The Provider shall indemnify and hold each Contracting Authority and YPO harmless against all liabilities arising out of or in connection with clauses 13.8.3(e) and 13.8.7.

### 13.9 Temporary to Permanent Transfers

- 13.9.1 The Contracting Authority may offer a permanent Employee position to a Temporary Worker at any time during or following the completion of a Placement. There will be no fee charged to the Contracting Authority in the event that the individual concerned has worked for more than twelve (12) weeks (whether continuous or not) in any twelve (12) month period with the Contracting Authority.
- 13.9.2 Where the Temporary Worker applies for a role which is either advertised internally or externally by the Contracting Authority and a fair and open recruitment campaign is completed by the Contracting Authority, the Provider will not be entitled to receive any transfer or introduction fee from the Contracting Authority.
- 13.9.3 The Provider shall ensure that all Sub-contractors work in line with Clauses 13.9.1 and 13.9.2 and do not charge any fees in addition to these Clauses relating to temporary to permanent transfers.

### 13.10 Dispute Resolution

- 13.10.1 Without prejudice to Clause 56 of this Contract, in the event of a dispute between Providers concerning an Applicant's representation, the Provider who first submitted the Applicant's CV to the Contracting Authority for the specific Placement in question, will have ownership over the Applicant on the assumption the Provider had the express permission of the Applicant to submit their CV at the time.

### 13.11 Provider Non-Solicitation

- 13.11.1 The Provider (on behalf of itself and its employees) undertakes that during the period of this Agreement and for six months after termination, it will:
- (a) not canvass nor solicit for direct or indirect employment any personnel including Employees of a Contracting Authority; and
  - (b) not solicit or encourage a Contracting Authority's personnel including Employees to leave its employ, nor recommend its personnel to any third party that might result in an approach to personnel to leave.
- 13.11.2 The Provider (on behalf of itself and its employees) undertakes that during any Temporary Placement, it will:
- (a) not canvass nor solicit for direct or indirect employment the Temporary Worker undertaking the Temporary Placement; and
  - (b) not solicit or encourage a Temporary Worker during the completion of their Temporary Placement to leave its employ, nor recommend them to any third party that might result in an approach to the Temporary Worker to leave.
- 13.11.3 The Provider acknowledges and agrees that no fee shall be payable should the Provider introduce a current employee of the Contracting Authority to one of its group companies. The Provider undertakes that it shall immediately inform the Contracting Authority in the event that one of its employee's passes details of another group company's Employee or Temporary Worker to the Provider.
- 13.11.4 In the event a Contracting Authority Employee approaches the Provider either directly or in response to an advertisement, the Provider is free to work with that employee provided they keep written evidence from the employee that they initiated the approach.





13.11.5 Subject to Clause 13.11.4, for the duration of the Contract and for a period of twelve (12) Months thereafter neither the Contracting Authority nor the Provider shall employ or offer employment to any of the other Party's Staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

13.11.6 Notwithstanding any terms to the contrary in this clause 13.11 the Provider shall not be restricted in respect of any Contracting Authority Employee who responds to an advertisement placed by Provider or approaches Provider to register for work finding services without having been previously approached directly by Provider or posts their details in the public domain such as professional networking sites.

#### **14. MANNER OF PROVIDING SERVICES**

14.1 The Provider shall at all times comply with the relevant legislation, codes of conduct and regulations governing the provision of Services.

14.2 Where applicable the Provider shall maintain and shall ensure that any Staff utilised in the provision of the Services maintain accreditation and certification with the relevant authorised body. To the extent that the standard of Services has not been specified in the Contract the Provider shall agree the relevant standard of the Services with the Contracting Authority prior to the provision of the Services, and in any event the Provider shall perform its obligations under the Contract in accordance with the Law, Good Industry Practice and any relevant regulations or legislation.

14.3 The Provider shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper provision of the Services.

14.4 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation Authority.

#### **15. CONTRACT PERFORMANCE**

15.1 In supplying the Services, the Provider shall perform its obligations under the Contract:

15.1.1 with appropriately experienced, accredited, qualified and trained Staff with all due care and attention; and

15.1.2 in a timely manner.

15.2 The Provider shall ensure that:

15.2.1 the Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement or any sample Approved by the Contracting Authority;

15.2.2 the Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;

15.2.3 the Services conform in all respects with all applicable Laws; and

15.2.4 the Services are free from defects in design and workmanship and are fit for purpose for which such Services are ordinarily used and for any particular purpose made known to the Provider by the Contracting Authority.

15.3 The Provider shall discharge its obligations hereunder with all due skill, care and diligence including Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.



## **16. KEY PERSONNEL**

- 16.1 The Parties have agreed to the appointment of the Key Personnel. The Provider shall inform the Contracting Authority within ten (10) Working Days or as soon as reasonably possible of any changes to their Key Personnel and shall ensure that a meeting is arranged between the Parties to establish a good working relationship with the new member or Key Personnel. The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Contracting Authority. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 16.2 The Contracting Authority may also require the Provider to remove any Key Personnel that the Contracting Authority, acting reasonably at all times, considers in any respect unsatisfactory. The Contracting Authority shall not be liable for the cost of removing and/or replacing any Key Personnel.

## **17. PROVIDER'S STAFF**

- 17.1 The Contracting Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises: -
- 17.1.1 any member of the Staff; or
- 17.1.2 any person employed or engaged by any member of the Staff;
- whose admission or continued presence would, in the reasonable opinion of the Contracting Authority, be undesirable.
- 17.2 At the Contracting Authority's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Contracting Authority may reasonably request.
- 17.3 The Provider's Staff, engaged within the boundaries of the 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 Premises.
- 17.4 If the Provider fails to comply with Clause 17.2 within two (2) Months of the date of the request, the Contracting Authority 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 Contracting Authority.
- 17.5 The decision of the Contracting Authority as to whether any person is to be refused access to the Premises and as to whether the Provider has failed to comply with Clause 17.2 shall be final and conclusive.
- 17.6 The Provider shall comply with the Staff Vetting Procedures in respect of all Provider Staff employed or engaged by the Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

## **PAYMENT AND CONTRACT PRICE**

### **18. CONTRACT PRICE**



- 18.1 In consideration of the Provider's performance of its obligations under the Contract, the Contracting Authority shall pay the Contract Price in accordance with Clause 19 (Payment and VAT).
- 18.2 The Contracting Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 18.3 In relation to the Contract only, in the event that statutory changes, or the application of enhanced statutory rights (including but not limited to pension increases), have the effect of increasing the direct costs of providing the Services or remunerating the Temporary Workers, the Provider shall be entitled to approach the Contracting Authority for approval to make corresponding adjustments to the Contract price for the purpose of reflecting the effect of such changes.
- 18.4 Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the Provider will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Framework Contract, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Contracting Authority or any other appropriate means.

## **19. PAYMENT AND VAT**

- 19.1 The Contracting Authority shall pay all sums due to the Provider in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile set out in the Order Form.
- 19.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and any disbursements and that it is supported by any other documentation reasonably required by the Contracting Authority to substantiate the invoice.
- 19.3 The Provider shall ensure that all invoices submitted to the Contracting Authority for Services are exclusive of the Retrospective Payment payable to YPO in respect of the Services. The Provider shall not be entitled to increase the charges by an amount equal to the Retrospective Payment or to recover such Retrospective Payment as a surcharge or disbursement.
- 19.4 Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days of a valid undisputed invoice, as defined by the sub-contract requirements.
- 19.5 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 19.6 The Provider shall indemnify YPO and the Contracting Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Contracting Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 19.6 shall be paid by the Provider to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Authority.



- 19.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under Clause 47 (Termination) for failure to pay undisputed sums of money.

## **20. SET OFF**

- 20.1 The Provider shall not be entitled to retain or set-off any amount due to the Contracting Authority by it, but the Contracting Authority may retain or set-off any amount owed to it by the Provider under this Contract which has fallen due and payable against any amount due to the Provider under this Contract.
- 20.2 If the payment or deduction of any amount referred to in Clause 20.1 is disputed, then any undisputed element of that amount shall be paid, and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

## **21. RECOVERY OF SUMS DUE**

- 21.1 Wherever under the Contract any undisputed sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Contracting Authority in respect of any breach of the Contract), the Contracting Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Contracting Authority.
- 21.2 Any overpayment by either Party, whether of the Contract Price 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.
- 21.3 The Provider shall make any payments due to the Contracting Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Authority to the Provider.
- 21.4 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.

## **STATUTORY OBLIGATIONS AND REGULATIONS**

### **22. PREVENTION OF BRIBERY AND CORRUPTION**

- 22.1 The Provider:
- 22.1.1 has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Contract;
  - 22.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010;
  - 22.1.3 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by YPO or the Contracting Authority or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Contracting Authority, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Contracting Authority prior to the execution of this Contract.
- 22.2 The Provider will upon request provide the Contracting Authority with all reasonable assistance to enable the Contracting Authority to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Contracting Authority



by any relevant government or agency in any relevant jurisdiction. Should the Contracting Authority request such assistance the Contracting Authority shall pay the reasonable expenses of the Provider arising as a result.

- 22.3 The Provider will provide to the Contracting Authority certification (if requested to do so), in writing in such form as may be provided by the Contracting Authority, to be signed by an officer of the Provider, of the compliance with this Clause 22 by:

22.3.1 the Provider; and

22.3.2 all persons associated with the Provider; and

22.3.3 any other persons who are supplying Services in connection with this Contract.

- 22.4 Certification (if requested) will be provided by the Contracting Authority within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by the Contracting Authority.

- 22.5 The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Contracting Authority and enforced by the Provider where appropriate.

- 22.6 Should the Provider become aware of or suspect any breach of Clause 22.1 it will notify the Contracting Authority immediately.

- 22.7 Following notification under Clause 22.6 the Provider will respond promptly and fully to the enquiries of the Contracting Authority, cooperate with any investigation undertaken by the Contracting Authority and allow the Contracting Authority to audit any books, records and other relevant documentation. The Provider's obligations under this Clause 22.7 shall survive the expiry or termination of this Contract for a further period of six (6) years.

- 22.8 The Contracting Authority may recover in full from the Provider and the Provider shall indemnify the Contracting Authority in full from and against any other loss sustained by the Contracting Authority in consequence of any breach of this Clause 22 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.

- 22.9 The Contracting Authority may terminate this Contract and any Order immediately upon serving written notice if the Provider or its Staff whether or not acting with the Provider's knowledge, breaches Clause 22. Before exercising its right of termination under this Clause 22.9 the Contracting Authority will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

22.9.1 the Provider or a senior officer of the Provider; or

22.9.2 a member of Staff who is not acting independently of the Provider. The expression 'not acting independently of' (when used in relation to the Provider or its Staff) means and shall be construed as acting;

(a) with the authority of; or

(b) with the actual knowledge; of any one or more of the Provider's or Staff (as applicable) directors or partners or

(c) in circumstances where any one or more of the directors (or partners) of the Provider or its Staff (as applicable) ought reasonably to have had knowledge.

- 22.10 Any notice of termination by the Contracting Authority under Clause 22.9 must specify:



22.10.1 The nature of the Prohibited Act; and

22.10.2 The identity of the person whom the Contracting Authority believes has committed the Prohibited Act; and

22.10.3 The date on which the Contract will terminate

22.11 In the event of any breach of Clause 22 the Contracting Authority is entitled to recover from the Provider the value of any gift, consideration or commission.

22.12 Notwithstanding Clause 56 (Dispute Resolution) any dispute relating to:

22.12.1 the interpretation of this Clause 22 or

22.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Contracting Authority and its decision shall be final and conclusive

22.13 Termination under Clause 22.9 will:

22.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Authority under this Contract;

22.13.2 prohibit the Provider from claiming any damages for early termination;

22.13.3 allow the Contracting Authority to recover from the Provider the amount of any loss suffered by the Contracting Authority resulting from the termination; and

22.13.4 entitle the Contracting Authority to be indemnified by the Provider for any additional cost's losses, damages or expenses incurred in re-procuring and obtaining the Services from another party.

## **23. DISCRIMINATION**

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

23.2 The Provider shall take all reasonable steps to secure the observance of Clause 23.1 by all its Staff and servants, employees, or agents of the Provider employed in the execution of the Contract.

## **24. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999**

24.1 A person who is not a Party to the Contract 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 and does not apply to the Crown.

## **25. ENVIRONMENTAL REQUIREMENTS**

25.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Contracting Authority's environmental policy, 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.

## **26. HEALTH AND SAFETY**

- 26.1 The Provider shall promptly notify the Contracting Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Contracting Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Contract.
- 26.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Contracting Authority in respect of Staff and other persons working there.
- 26.3 The Provider shall notify the Contracting Authority 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.
- 26.4 The Provider shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.
- 26.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Contracting Authority on request.

## **PROTECTION OF INFORMATION**

### **27. DATA PROTECTION**

- 27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract dictates the status of each party under the DPA 2018. A Party may act as:
- (a) "Data Controller" in respect of the other Party who is "Data Processor";
  - (b) "Data Processor" in respect of the other Party who is "Data Controller";
  - (c) "Independent Controller" of the Personal Data where the other Party is also "Data Controller",
- in respect of certain Personal Data under this Call Off Contract and shall specify in Appendix 13 (Processing Personal Data) which scenario they think shall apply in each situation.
- 27.2 When acting as a Data Processor the relevant Party shall:
- (a) process the Personal Data in order to perform its obligations under this Call Off Contract;
  - (b) ensure that at all times they have in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
  - (c) not disclose or transfer the Personal Data to any third party or staff unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the other Party (save where such disclosure or transfer is specifically authorised under this Call Off Contract or is specifically required in order for the parties to perform their obligations under this Call Off Contract);





- (d) take reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that the staff:
  - (i) are aware of and comply with the Call Off Contract;
  - (ii) 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 Data Controller or as otherwise permitted by this Call Off Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify the other Party immediately if it becomes aware of an event that results, or may result, in unauthorised access to Personal Data held by it under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data breach, or if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the its's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) 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;
- (f) provide the other Party with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made including by promptly providing:
  - (i) the other Party with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested to enable each Party to comply with the Data Subject Access Requests within the relevant timescales set out in the DPA; and
  - (iii) the other Party, on request, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 27 and provide copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

27.3 The Parties shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, either Party or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:

- (a) the Party making the request shall propose a Variation to the other which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
- (b) the requesting Party shall set out in its proposal to the other for a Variation details of the following:





- (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Data Processor will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Data Controllers compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Contracting Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (d) the Parties shall comply with such other instructions and shall carry out such other actions required to comply with Data Protection Legislation, including:
- (i) incorporating standard and/or model clauses (which have been approved as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (1) a direct data processing agreement with the Data Controller on such terms as may be required by them; or
    - (2) a data processing agreement with the Data Processor on terms which are equivalent to those agreed between the Data Controller and the Sub-Contractor relating to the relevant Personal Data transfer, and
  - (iii) in each case which the Parties acknowledge may include the incorporation of model contract provisions (which have been approved as offering adequate safeguards under the DPA) and technical and organisation measures which the Contracting Authority deems necessary for the purpose of protecting Personal Data.
- 27.4 Both Parties shall use reasonable endeavours to assist the other to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Call Off Contract in such a way as to cause the other to breach any of their obligations under the Data Protection Legislation to the extent that it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 27.5 Both Parties shall designate a data protection officer if required by the Data Protection Legislation.
- 27.6 Before allowing any Sub-Processor to process any Personal Data related to this Call Off Contract, the Data Processor shall:
- (a) notify the Data Controller in writing of the intended Sub-Processor and processing;
  - (b) obtain the written consent of the Data Controller;



- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 27 such that they apply to the Sub-Processor; and provide the Data Controller with such information regarding the Sub-Processor as they may reasonably require.

27.7 The Data Processor shall remain fully liable for all acts or omissions of any Sub-Processor.

## **28. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

28.1 The Provider acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Contracting Authority to enable them to comply with its Information disclosure obligations.

28.2 The Provider shall and shall procure that its Staff shall:

28.2.1 transfer to the Contracting Authority 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;

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

28.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority 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 EIR.

28.3 The Contracting Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

28.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.

28.5 The Provider acknowledges that (notwithstanding the provisions of Clause 28.2) the Contracting Authority may, acting in accordance with the Secretary of State for 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 EIR to disclose information concerning the Provider of the Services:

28.5.1 in certain circumstances without consulting the Provider; or

28.5.2 following consultation with the Provider and having taken their views into account;

28.5.3 provided always that where Clause 28.2 applies the Contracting Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

28.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Contracting Authority to inspect such records as requested from time to time.

28.7 The Provider acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Contracting Authority may be obliged to disclose it in accordance with Clause 28.5.



**29. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

29.1 The Provider shall comply with and shall ensure that its Staff comply with, the provisions of:

29.1.1 the Official Secrets Acts 1911 to 1989; and

29.1.2 Section 182 of the Finance Act 1989.

29.2 In the event that the Provider or its Staff fail to comply with this Clause, the Contracting Authority reserves the right to terminate the Contract by giving notice in writing to the Provider.

**30. CONFIDENTIAL INFORMATION**

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

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

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

30.2 Clause 30.1 shall not apply to the extent that:

30.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 28 (Freedom of Information);

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

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

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

30.2.5 it is independently developed without access to the other party's Confidential Information.

30.3 The Provider may only disclose the Contracting Authority's Confidential Information to its Staff who are directly involved in the provision of the 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.

30.4 The Provider shall not, and shall procure that its Staff do not, use any of the Contracting Authority's Confidential Information received otherwise than for the purposes of this Contract.

30.5 At the written request of the Contracting Authority, the Provider shall procure that those members of the Staff identified in the Contracting Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

30.6 Nothing in this Contract shall prevent the Contracting Authority from disclosing the Provider's Confidential Information:

30.6.1 to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or 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 Crown body or any Contracting Authority;

30.6.2 to any consultant or other person engaged by the Contracting Authority or any person conducting a gateway review provided that the Contracting Authority shall ensure that any such third party shall be subject to confidentiality obligations in respect of the Provider's Confidential Information and that the disclosure of such Confidential Information shall not result in the Provider being placed at a competitive disadvantage;

30.6.3 for the purpose of the examination and certification of the Contracting Authority's accounts;

30.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law, making similar provision with regard to the Contracting Authority of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources; or

30.6.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement.

30.7 The Contracting Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Providers Confidential Information is disclosed pursuant to Clause 30.6 is made aware of the Contracting Authority's obligations of confidentiality and maintains the confidentiality of the same.

30.8 Nothing in this Clause 30 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 Intellectual Property Rights.

30.9 The Provider shall not without the prior written consent of the Contracting Authority divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.

30.10 In the event that the Provider fails to comply with this Clause 30 the Contracting Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

30.11 The provisions of this Clause 30 shall apply notwithstanding termination of the Contract.

## **31. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

31.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Contracting Authority's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 31.

31.2 The Contracting Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Contracting Authority, including any examination of the Contract by the Auditor.

31.3 The Providers shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

31.4 Notwithstanding any provision of this Clause 31 and Clause 30 (Confidential Information), if the Provider notifies the Contracting Authority that the Provider has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Contracting Authority otherwise discovers the same, the Contracting Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).



## 32. SECURITY

- 32.1 The Contracting Authority shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Contracting Authority while on the premises and shall ensure that all Staff comply with such requirements.
- 32.2 The Provider may submit to the Contracting Authority a request in writing for copies of the Contracting Authority's written security procedures and/or for an opportunity to inspect the Contracting Authority's physical security arrangements. If, in its sole discretion, the Contracting Authority agrees to such a request, it shall deliver the requested copies to the Provider and/or offer the Provider an opportunity to inspect the physical security arrangements within a reasonable time.
- 32.3 Subsequent to the Commencement Date, the Contracting Authority shall conduct an assessment of the Provider's proposed VMS in accordance with the Contracting Authority's information and risk assurance process, during which the Provider shall within a reasonable time comply with any reasonable requests made by the Contracting Authority.
- 32.4 The Contracting Authority reserves the right to terminate the Contract by notice in writing with immediate effect in the event that:
- 32.4.1 the Provider fails to demonstrate that it has met (or shall be able to meet within a period of time that is acceptable to the Contracting Authority) the requirements of the Contracting Authority's information and risk assurance process; and/or
  - 32.4.2 the Provider otherwise fails to comply with this Clause 32.

## 33. INTELLECTUAL PROPERTY RIGHTS

- 33.1 Save as granted elsewhere under the Contract, neither the Contracting Authority nor the Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 33.2 The Parties shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any of the other Parties Pre-Existing IPR to any third party.
- 33.3 The Parties shall waive or procure a waiver of any moral rights in any copyright works assigned to the Contracting Authority under the Contract.
- 33.4 Each Party hereby grants to the other Party a non-exclusive, revocable, non-assignable licence to use the other Party's IPR during the Contract Period for the sole purpose of enabling the Provider to supply the Services and/or supply the Deliverables.
- 33.5 For any Intellectual Property that is created by the Staff, Temporary Workers or Permanent Employees during the Contract Period and whilst providing the Services or in the course of their employment at the Contracting Authority, the Intellectual Property Rights will be transferred to the Contracting Authority.
- 33.6 Prior to using any third-party Intellectual Property Rights, the Provider shall ensure that they have all necessary third-party licences to enable them to use the third-party Intellectual Property Rights to carry out its obligations under the Contract.
- 33.7 The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Contracting Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Authority may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or supply of the Deliverables and/or the possession or use by the Contracting Authority of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 33.7.1 items or materials based upon designs supplied by the Contracting Authority; or



- 33.7.2 the use of data supplied by the Contracting Authority which is not required to be verified by the Provider under any provision of the Contract.
- 33.8 The Contracting Authority shall notify the Provider in writing of the Claim and the Contracting Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:
- 33.8.1 shall consult the Contracting Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 33.8.2 shall take due and proper account of the interests of the Contracting Authority; and
- 33.8.3 shall not settle or compromise the Claim without the Contracting Authority's prior Approval (not to be unreasonably withheld or delayed).
- 33.9 If a Claim is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Contracting Authority and, at its own expense and subject to the consent of the Contracting Authority (not to be unreasonably withheld or delayed), use its best endeavours to: -
- 33.9.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- 33.9.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement,
- 33.10 In the event that the Provider is unable to comply with Clauses 33.9.1 or 33.9.2 within twenty (20) Working Days of receipt of the Provider's notification the Contracting Authority may terminate the Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Contracting Authority with all monies paid in advance in respect of the Services or Deliverables not delivered up to the date of termination, that is subject to the Claim.
- 33.11 In the event that a modification or substitution in accordance with Clause 33.9.1 is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with Clause 33.9.2 the Contracting Authority shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.
- 33.12 This Clause 33 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.

#### **34. RECORDS AND AUDIT ACCESS**

- 34.1 The Provider shall keep and maintain until seven (7) 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 Services supplied under it, the Call-Off Contracts entered into with YPO and each individual Contracting Authority and the amounts paid by each Contracting Authority.
- 34.2 The Provider shall keep the records and accounts referred to in Clause 34.1 above in accordance with good accountancy practice.





- 34.3 The Provider shall afford the relevant Contracting Authority and/or the Auditor access to such records and accounts relating to the operation of this Contract as may be required from time to time upon reasonable notice and subject to reasonable confidentiality undertakings.
- 34.4 The Provider shall on request provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of seven (7) years after the expiry of the Contract Period to the Contracting Authority, the Contracting Authority's representatives and/or the Auditor as may be required from time to time.
- 34.5 The Contracting Authority shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Provider or delay the provision or supply of Services save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Contracting Authority. The Contracting Authority will use reasonable endeavours to ensure that all audits are carried out during normal business hours (Monday to Friday, 9-5) and on reasonable notice.
- 34.6 Subject to the Contracting Authority's rights of Confidential Information, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including: -
- 34.6.1 all information requested by the Contracting Authority within the scope of the audit;
- 34.6.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
- 34.6.3 access to the Staff.
- 34.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 34, unless the audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit.

## **CONTROL OF THE CONTRACT**

### **35. TRANSFER AND SUB-CONTRACTING**

- 35.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.
- 35.2 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they were the actions and/or omissions of its own Staff but for the avoidance of doubt the Provider shall not be responsible for the acts and omissions of Temporary Workers while they are engaged on a Placement.
- 35.3 Where the Contracting Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Contracting Authority, be sent by the Provider to the Contracting Authority as soon as reasonably practicable.
- 35.4 Subject to Clause 35.6, the Contracting Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 35.4.1 any Contracting Authority; or
- 35.4.2 any other Authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Contracting Authority; or
- 35.4.3 any private sector Authority which substantially performs the functions of the Contracting Authority,





provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.

- 35.5 Any change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 35.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Contracting Authority.
- 35.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 35.4 to a Authority which is not a Contracting Authority or if there is a change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):
- 35.6.1 the rights of termination of the Contracting Authority in Clause 47 shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- 35.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.
- 35.7 The Contracting Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Contracting Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 35.8 Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.
- 35.9 The Provider must have a Sub-Contractor management process in place and be able to evidence this process to the Contracting Authority if requested. As a minimum the Provider must comply with the Invitation to Tender specification and must:
- 35.9.1 look at the Sub-Contractors performance overall and look at feedback in relation to any Temporary Workers that were provided to a contracting authority;
- 35.9.2 meet with their Sub-Contractors at least twice a year and for Sub-Contractors that are used frequently a minimum of four times a year. The outcomes of these meetings must be reported to YPO on a quarterly basis;
- 35.9.3 be able to provide reports to the Contracting Authority regarding work within local communities;
- 35.9.4 check that each of their Sub-Contractors are compliant with all applicable legislation and regulations;
- 35.9.5 monitor all National Insurance (NI) Contributions, Agency Workers Regulations (AWR), Working Time Regulations (WTR), etc;
- 35.9.6 ensure that the terms and conditions between the Provider and each of the Sub-Contractors are consistent;
- 35.9.7 maintain a Sub-Contractor complaints policy and make sure that each Sub-Contractor is aware of the complaints policy. Information on any complaints received should be



submitted to YPO and/or Contracting Authorities every six months.

### **36. WAIVER**

- 36.1 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.
- 36.2 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 8 (Notices).
- 36.3 A waiver 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.

### **37. VARIATION**

- 37.1 Subject to the provisions of this Clause 37.1, the Contracting Authority may request a variation to Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 37.2 The Contracting Authority may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 ("**the Variation Form**") to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 37.3 In the event that the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Contracting Authority may:
  - 37.3.1 agree to allow the Provider to continue to perform their obligations under the Contract without the Variation; or
  - 37.3.2 terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 56.
  - 37.3.3 If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

### **38. SEVERABILITY**

- 38.1 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.
- 38.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Contracting Authority and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

### **39. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES**



- 39.1 Where a complaint is received about the manner in which any Services have been supplied or work has been performed or about the procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Contracting Authority shall take all reasonable steps to investigate the complaint. The Contracting Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 47 (Termination) of the Contract.
- 39.2 In the event that the Contracting Authority is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Contracting Authority may, without prejudice to its rights under Clause 47 (Termination), do any of the following:
- 39.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Contracting Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
  - 39.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - 39.2.3 terminate, in accordance with Clause 47 (Termination), the whole of the Contract; and/or
  - 39.2.4 charge the Provider for and the Provider shall pay any costs reasonably incurred by the Contracting Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Contracting Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that (i) the Provider has been given a reasonable opportunity to perform the Services prior to the Contracting Authority performing them or engaging a third party, and (ii) the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 39.3 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Contracting Authority's instructions or such other period of time as the Contracting Authority may direct.
- 39.4 In the event that the Provider
- 39.4.1 fails to comply with Clause 39.3 above and the failure is materially adverse to the interests of the Contracting Authority or prevents the Contracting Authority from discharging a statutory duty; or
  - 39.4.2 persistently fails to comply with Clause 39.3 above
- the Contracting Authority may terminate the Contract with immediate effect by giving the Provider notice in writing.

#### **40. CUMULATIVE REMEDIES**

- 40.1 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.

#### **41. MONITORING OF CONTRACT PERFORMANCE**



- 41.1 The Provider shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the Provider may be required to produce under the Contract.

## **LIABILITIES**

### **42. LIABILITY, INDEMNITY AND INSURANCE**

- 42.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 42.1.1 death or personal injury caused by its negligence or that of its Staff; or
  - 42.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff.
- 42.2 Subject to Clause 42.3 and Clause 42.4, the Provider shall indemnify and keep indemnified the Contracting Authority 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 supply, of the Services by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly by any act or omission of the Provider or its Staff. The Provider shall not be responsible for any personal injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Authority or by breach by the Contracting Authority of its obligations under the Contract.
- 42.3 Subject always to Clause 42.4 and Clause 42.5, the liability of either Party for defaults shall be subject to the following financial limits:
- 42.3.1 the aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £5 million; and
  - 42.3.2 the annual aggregate liability under the Contract of either Party for all defaults shall in no event exceed the greater of £10 million or fifty per cent (50%) of the Contract Price payable by the Contracting Authority to the Provider in the year in which the liability arises.
- 42.4 Subject to Clause 42.1, in no event shall either Party be liable to the other for any:
- 42.4.1 loss of profits;
  - 42.4.2 loss of business;
  - 42.4.3 loss of revenue;
  - 42.4.4 loss of or damage to goodwill;
  - 42.4.5 loss of savings (whether anticipated or otherwise); and/or
  - 42.4.6 any indirect or consequential loss or damage.
- 42.5 The Contracting Authority may, amongst other things, recover as a direct loss:
- 42.5.1 any additional operational and/or administrative expenses arising from the Provider's default;
  - 42.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Authority arising from the Provider's default; and



- 42.5.3 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 Provider.
- 42.6 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Authority to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Contracting Authority, or the Contracting Authority's employees, servants or agents.
- 42.7 The Provider shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of insurable risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) Years following the expiration or earlier termination of the Contract.
- 42.8 The Provider shall affect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement: -
- 42.8.1 public liability insurance with a minimum limit of indemnity of £10,000,000 (ten million pounds) for each individual claim.
  - 42.8.2 employer's liability insurance with a minimum limit of indemnity of £10,000,000 (ten million pounds) for each individual claim; and
  - 42.8.3 professional indemnity insurance with a minimum limit of indemnity of £5,000,000 (five million pounds) for each individual claim.
- 42.9 The Provider shall give the Contracting Authority, 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.
- 42.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 42.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 42.
- 42.12 Where the Provider directly causes or contributes to the below cost, liability, demand or expense, the Provider shall indemnify the Contracting Authority, and shall be able to produce evidence of the same indemnity from the Providers Sub-Contractors on request, against each and every cost, liability, demand or expense (including for the avoidance of doubt redundancy payments) or any liability for unfair or wrongful dismissal incurred by the Contracting Authority in connection with any Placement under this Contract or Order Form including but not limited to:
- 42.12.1 The Provider failing to pay any Sub-Contractor, Temporary Worker or any individual or company in connection with providing Services under this Contract.
  - 42.12.2 Any claim arising out of the Provider or its Sub-Contractors failing to comply with their obligations both under this Contract and their legal obligations.



- 42.12.3 Any claim arising directly due to the Provider or its Sub-Contractors failing to disclose information reasonably requested in relation to any Temporary Workers or any individual or company in connection with providing Services under this Contract.

#### **43. PROFESSIONAL INDEMNITY**

- 43.1 The Provider shall affect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the sum set out in the Invitation to Tender for the Framework Agreement and for each individual claim or such higher limit as the Contracting Authority may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

#### **44. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

- 44.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Contracting Authority and keep the Contracting Authority 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 Contracting Authority 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. This indemnity shall not apply where the Contracting Authority has treated any Staff as its employees or where any Staff become employees of the Contracting Authority under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
- 44.2 For the avoidance of doubt the responsibility of IR35 will sit with the Contracting Authority with support from the Provider.

#### **45. WARRANTIES AND REPRESENTATIONS**

- 45.1 The Provider warrants and represents that:
- 45.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
  - 45.1.2 the Contract is executed by a duly authorised representative of the Provider;
  - 45.1.3 in entering the Contract, it has not committed any Fraud;
  - 45.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Contracting Authority prior to execution of the Contract and it will advise the Contracting Authority 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;
  - 45.1.5 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;





- 45.1.6 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;
- 45.1.7 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 Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- 45.1.8 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are the Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 45.1.9 necessary for the performance of its obligations under the Contract;
- 45.2 in the three (3) years prior to the date of the Contract:
  - 45.2.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - 45.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - 45.2.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## **DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION**

### **46. SUSPENSION**

- 46.1 Without prejudice to the Contracting Authority's right to terminate the Contract in Clause 47 below, the Contracting Authority, acting reasonably at all times, may suspend the Provider's appointment to supply Services by giving notice in writing to the Provider. If the Contracting Authority provides notice to the Provider in accordance with this Clause 46, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Contracting Authority in writing from time to time.
- 46.2 A Provider's Appointment may be suspended to allow YPO and/or a Contracting Authority the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Services under this Framework Agreement. Should this occur the Provider will be suspended (at no cost to YPO or the Contracting Authority) whilst investigations take place. Any Orders already placed during this period shall be put on hold pending the outcome.
- 46.3 Following suspension of a Provider's appointment under this Clause 46 the Provider will be informed of the outcome as soon as possible and be advised whether or not they the Contract has been terminated with immediate effect.

### **47. TERMINATION**

#### **Termination - Insolvency and Change of Control**

- 47.1 The Contracting Authority may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:





- 47.1.1 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;
  - 47.1.2 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);
  - 47.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (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;
  - 47.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 47.1.5 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;
  - 47.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
  - 47.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 47.1.8 any event similar to those listed in Clause 47.1 occurs under the law of any other jurisdiction.
- 47.2 The Contracting Authority may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:
- 47.2.1 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 Provider's creditors;
  - 47.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy;
  - 47.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
  - 47.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
  - 47.2.5 a creditor or encumbrance 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 Provider's assets and such attachment or process is not discharged within fourteen (14) days;
  - 47.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
  - 47.2.7 the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.



- 47.3 The Provider shall notify the Contracting Authority immediately if the Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**"). The Contracting Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
- 47.3.1 being notified that a Change of Control has occurred; or
  - 47.3.2 where no notification has been made, the date that the Contracting Authority 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.
- 47.4 The Contracting Authority may terminate the Contract with immediate effect by notice in writing where:
- 47.4.1 the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Services;
  - 47.4.2 the Provider and its Staff employed in connection with the Services have failed to comply with the relevant Law governing the delivery of Services.

#### **Termination on Default – Minor Default**

- 47.5 Where the Provider commits a Minor Default of the Contract, the Contracting Authority shall be entitled to issue the Provider with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Default and give the Provider a minimum of ten (10) working days to remedy the Minor Default.
- 47.6 If the Provider commits three (3) Minor Defaults in a twelve (12) month rolling period, this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 47.7.3.

#### **Termination on Default – Material Default**

- 47.7 The Contracting Authority may terminate the Contract by serving written notice on the Provider with effect from the date specified in such notice, where the Provider commits a Material Default and:
- 47.7.1 the Provider has not remedied the Material Default to the satisfaction of the Contracting Authority within twenty (20) Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied;
  - 47.7.2 the Material Default is not, in the reasonable opinion of the Contracting Authority, capable of remedy;
  - 47.7.3 if the Provider has committed three (3) or more Minor Defaults within a twelve (12) month rolling period;
  - 47.7.4 where any Contracting Authority terminates a Call-Off Contract awarded to the Provider under the Framework Agreement as a consequence of a Material Default by the Provider.
- 47.8 If the Contracting Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Contracting Authority in writing of such failure to pay. If the Contracting Authority fails to pay such undisputed sums within ninety (90) of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that



such right of termination shall not apply where the failure to pay is due to the Contracting Authority exercising its rights under Clause 21 (Recovery of Sums Due).

- 47.9 If the Provider has been suspended in accordance with Clause 46 and the outcome following such suspension shows the Provider to be at fault, to have provided Services not to the required specification or that the Provider has acted in breach of this Contract and/or the Framework Agreement then the Contracting Authority may serve notice on the Provider to terminate the Contract.

47.10 Any of the provisions in Regulation 73(1) of the Regulations apply

#### **48. BREAK**

- 48.1 The Contracting Authority shall have the right to terminate the Contract at any time by giving three (3) Months written notice to the Provider.

#### **49. FRAMEWORK AGREEMENT**

- 49.1 The Contracting Authority may terminate the Contract by giving written notice to the Provider with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

#### **50. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 50.1 Where the Contracting Authority terminates the Contract under Clause 47 and then makes other arrangements for the supply of Services, the Contracting Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period. The Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 47, no further payments shall be payable by the Contracting Authority to the Provider until the Contracting Authority has established the final cost of making those other arrangements.
- 50.2 Where the Contracting Authority terminates the Contract under Clause 48, the Contracting Authority shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and valued list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause 48.
- 50.3 The Contracting Authority shall not be liable under Clause 50.2 to pay any sum which:
- 50.3.1 was claimable under insurance held by the Provider, and the Provider 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
- 50.3.2 when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.
- 50.4 Save as otherwise expressly provided in the Contract:
- 50.4.1 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 such termination or expiry; and
- 50.4.2 Within thirty (30) Working Days of the date of termination or expiry of the Contract, the Provider shall return to the Contracting Authority any data and Confidential



Information belonging to the Contracting Authority that is in the Provider's possession, power or control, either in its then current format or in a format nominated by Contracting Authority, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Contracting Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

50.4.3 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the Provider under Clauses 19 (Payment and VAT), 21 (Recovery of Sums Due), 22 (Prevention of Bribery and Corruption), 27 (Data Protection Act), **Error! Reference source not found.** (Freedom of Information), 29 (Confidential Information), 33 (Intellectual Property Rights), 34 (Records and Audit Access), 40 (Cumulative Remedies), 42 (Liability, Indemnity and Insurance), 43 (Professional Indemnity), 50 (Consequences of Expiry or Termination), 52 (Recovery upon Termination) and 54 (Governing Law).

## 51. DISRUPTION

- 51.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Contracting Authority, its employees or any other Provider employed by the Contracting Authority.
- 51.2 The Provider shall immediately inform the Contracting Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 51.3 In the event of industrial action by the Staff, the Provider shall seek the Contracting Authority's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 51.4 If the Provider's proposals referred to in Clause 51.3 are considered insufficient or unacceptable by the Contracting Authority acting reasonably then the Contract may be terminated with immediate effect by the Contracting Authority by notice in writing.
- 51.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Authority, an appropriate allowance by way of extension of time will be Approved by the Contracting Authority. In addition, the Contracting Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

## 52. RECOVERY UPON TERMINATION

- 52.1 On the termination of the Contract for any reason, the Provider shall:
  - 52.1.1 immediately return to the Contracting Authority all Confidential Information, Personal Data and Contracting Authority's Pre-Existing IPR's and the Project Specific IPR's in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - 52.1.2 immediately deliver to the Contracting Authority all Property (including materials, documents, information and access keys) provided to the Provider under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - 52.1.3 assist and co-operate with the Contracting Authority to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress;



52.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Contracting Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Contracting Authority or the Replacement Provider to conduct due diligence.

52.2 If the Provider fails to comply with Clause 52.1 the Client may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors where any such items may be held.

52.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause 52.1 free of charge. Otherwise, the Contracting Authority shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

52.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 33 shall automatically terminate without the need to serve notice.

### **53. FORCE MAJEURE**

53.1 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 six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

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

53.3 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 53.1 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.

53.4 It is expressly agreed that any failure by the Provider to perform or any delay by the Provider in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Provider shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

53.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **DISPUTES AND LAW**

### **54. GOVERNING LAW**



- 54.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.
- 54.2 This Contract is binding on the Contracting Authority and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

## **55. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS (TUPE)**

- 55.1 During the period of six (6) Months preceding the expiry of this Contract or after the Contracting Authority has given notice to terminate the Contract or the Provider stops trading, and within twenty (20) Working Days of being so requested by the Contracting Authority, the Provider shall fully and accurately disclose to the Contracting Authority, for the purposes of TUPE, all information relating to its Staff engaged in providing the Services under the Contract (subject to data protection obligations), in particular but not necessarily restricted to, the following:
- 55.1.1 the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of the Contract but for any operation of law;
- 55.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates, but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);
- 55.1.3 full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;
- 55.1.4 details of pensions entitlements, if any; and
- 55.1.5 job titles of the members of Staff affected and the qualifications required for each position.
- 55.2 The Provider shall permit the Contracting Authority to use the information for the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Service by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.
- 55.3 The Provider agrees to indemnify the Contracting Authority fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 55.1.
- 55.4 In the event that the information provided by the Provider in accordance with Clause 55 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Contracting Authority of the inaccuracies and provide the amended information.
- 55.5 The provisions of this Clause 55 shall apply during the continuance of the Contract and for 12 Months after its termination.

## **56. DISPUTE RESOLUTION**

- 56.1 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 finance director (or equivalent) of each Party.





- 56.2 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.
- 56.3 If the dispute cannot be resolved by the Parties pursuant to Clause 56.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 56.5 unless:
- 56.3.1 the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or
- 56.3.2 the Provider does not agree to mediation.
- 56.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 56.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 56.5.1 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 then (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to specify relevant mediation Provider to appoint a Mediator;
- 56.5.2 The Parties shall within ten (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 Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;
- 56.5.3 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;
- 56.5.4 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;
- 56.5.5 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
- 56.5.6 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.





**Appendix 1:**

**ORDER FORM**

**FRAMEWORK AGREEMENT (000942)**

**Managing Temporary and Permanent Recruitment**

**FROM**

<b>Contracting Authority</b>	The Secretary of State for the Department for International Trade
<b>Address</b>	[This has been redacted]
<b>Invoice Address</b>	[This has been redacted]
<b>Contact Ref</b>	[This has been redacted]

**TO**

<b>Provider</b>	Hays Specialist Recruitment Limited
<b>Address</b>	[This has been redacted]
<b>Contact Details</b>	[This has been redacted]
<b>Key Personnel</b>	[This has been redacted]

<b>1. TERM</b>
<b>1.1 Commencement Date</b>
1.1.1 This Contract shall commence on: 31/05/2022
<b>1.2 Expiry Date</b>
1.2.1 This Contract shall expire on:  (a) the expiry of the Initial Contract Period (being the period of three (3) years from and including the Commencement Date); or  (b) if the Contracting Authority elects to extend the Initial Contract Period in accordance with Clause 3.1 of the Contract, the expiry of the Extension Period (being the period of one (1) year from the end of the Initial Contract Period).



## 2. SERVICES

### 2.1

*The Services to be supplied by the Provider are set out in Appendix 5 (Specification of Requirements).*

*For the avoidance of doubt, for any Additional Services that the Contracting Authority has listed within the Order Form, the Contracting Authority is not obliged to place an Order for these but are Services that they could potentially Order in the future. There is no commitment from the Contracting Authority to purchase the Additional Services mentioned in this Order Form.*

### 2.2 Base Location

Department for International Trade (DIT) HQ – London (primary)

DIT Hubs are/will also be in the following locations:

- Darlington
- Edinburgh
- Cardiff
- Belfast

Due to the Covid-19 pandemic, and the resultant changes to future working practices, service provision may also take place remotely/virtually.

**2.3 As per Clause 13.6.8 the refund scale for with regards to a Permanent Placement leaving within the first twelve (12) weeks of their Placement and a suitable replacement is not found is as follows:**

0-4 weeks	100% refund
5-7 weeks	80-60% refund
8-10 weeks	50-30% refund
11-12 weeks	20-10% refund
12+ weeks	No refund

### 2.4 Implementation Plan Details

The Implementation Plan Details are set out in Appendix 6 (Implementation Plan Details).

### 2.5 Key Personnel

The Parties shall discuss and agree the Provider's Key Personnel during the weekly meetings which shall take place during the Transition Period pursuant to Paragraph 22 of Appendix 5 (Specification of Requirements). Upon agreement of the Provider's Key Personnel, the Parties shall record the Provider's Key Personnel in the Variation Form and append the signed Variation Form to the Order Form.

## 3. AMENDMENTS TO TERMS AND CONDITIONS



Amendments to the Order are set out in Appendix 4 (Call-Off Terms and Conditions Variation Form).

#### 4. PAYMENT PROVISIONS

<b>Contract Price</b>	The Contract Price is set out in Appendix 2 (Prices for Services). For the avoidance of doubt, there is no committed spend under this Contract.
<b>Funding</b>	N/A
<b>Invoicing Arrangements</b>	The invoicing arrangements are set out in Paragraph 5 of Part A of Appendix 2 (Prices for Services).

#### 5. CONFIDENTIAL INFORMATION

**The following information shall be deemed Commercially Sensitive Information or Confidential Information:**

Hays Specialist Recruitment Limited deem all of the documents submitted as part of the ITFC to be commercially sensitive, including:

Technical response A01 – SV03

Pricing Submission

Additional HR Services indicative pricing

Form of tender

Subcontracting information

The reason that this information is exempt under the Freedom of Information Act 2000, is that it is commercially sensitive details processes and services that are unique to Hays.

Information about our technology systems is proprietary and as such would provide competitive advantages to other suppliers if shared. We would deem this information commercially sensitive.

Information on our delivery team would also be deemed confidential due to GDPR.

The period of time for which it is considered this information should be exempt is the full length of the framework agreement including extensions.

[This has been redacted]

#### 6. SPECIAL TERMS AND CONDITIONS



Not applicable.

## SIGNATURE PAGE

### SIGNED BY OR ON BEHALF OF THE PARTIES

#### Authorised to sign for and on behalf of the Contracting Authority

Signature	[This has been redacted]
Date	
Name in Capitals	
Address	

#### Authorised to sign for and on behalf of the Provider

Signature	[This has been redacted]
Date	
Name in Capitals	
Address	



## Appendix 2:

### PRICES FOR SERVICES

#### 1. Definitions

- 1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

<b>“Agency Fee”</b>	means the Sub-Contractor’s charges for delivering any part of the Services which shall include all of the Sub-Contractor’s overheads associated with fulfilment of assignments, for example, recruitment, processing, administration and staffing costs;
<b>“Cabinet Office Markets and Suppliers Team”</b>	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
<b>“Consent”</b>	means the prior written consent of the Contracting Authority;
<b>“European Standard”</b>	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
<b>“Financial Transparency Objectives”</b>	has the meaning given in Paragraph 1.1 of Part B of this Appendix;
<b>“Inside OPWR”</b>	means a Temporary Worker which the Contracting Authority has determined in the Status Determination Statement that the Off-Payroll Working Rules apply;
<b>“Management Fee”</b>	means the Provider’s charges for delivering the Services including all costs associated with providing the Services, for example, costs associated with account management, implementation, training, electronic systems, and end of contract procedures;
<b>“Off-Payroll Working Rules”</b>	means the off-payroll working rules in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003;
<b>“Onerous Contract”</b>	means a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;



**“Onerous  
Contract  
Report”**

means a report provided by the Provider pursuant to Paragraph 3.1 of Part B to this Appendix;

**“Open Book  
Data”**

means complete and accurate financial and non-financial information which is sufficient to enable the Contracting Authority to verify the Fees already paid or payable and Fees forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

a) the Provider’s costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;

b) operating expenditure relating to the provision of the Services including an analysis showing:

(i) the unit costs and quantity of consumables and bought-in services;

(ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;

(iii) a list of costs underpinning those rates for each manpower grade; and

(iv) Reimbursable Expenses;

c) overheads

d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;

e) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Provider;

f) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and

g) the actual costs profile for each Service Period;

**“Quarter”**

means three (3) calendar Months;



**“Pre-Identified  
(Nominated)  
Worker”**

has the meaning given in Paragraph 1 of Appendix 11 (Pre-Identified (Nominated) Workers);

**“Pre-Identified  
(Nominated)  
Worker Fee”**

means the fee payable for:

(i) Pre-Identified (Nominated) Workers; and

(ii) all Temporary Workers that prior to the Commencement Date were engaged on assignments for the Contracting Authority that have been engaged by the Provider or its Sub-Contractors following the Commencement Date pursuant to Paragraphs 19 and 20 of Appendix 5 (Specification of Requirements);

**“Reimbursable  
Expenses”**

means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Contracting Authority's expenses policy current from time to time, but not including:

(a) travel expenses incurred as a result of Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Contracting Authority otherwise agrees in advance in writing; and

(b) subsistence expenses incurred by Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

**“Retrospective  
Payment”**

means the charge payable to YPO in accordance with Clause 15 of the Framework Agreement;

**“Review Date”**

has the meaning given in Paragraph 4.1 of Part A of this Appendix;

**“Service  
Period”**

means a Quarter, save that:

(a) the first service period shall begin on the Commencement Date and shall expire at the end of the Quarter in which the Commencement Date falls; and





(b) the final service period shall commence on the first day of the Quarter in which the Term expires or terminates and shall end on the expiry or termination of the Term;

**“Statement of Work Placement”**

means a Temporary Placement which the Parties have agreed to calculate the Temporary Worker Pay on a fixed price basis pursuant to Paragraph 1.2 of Annex 1 to Part A of this Appendix;

**“Status Determination Statement”**

means the status determination statement issued by the Contracting Authority pursuant to Paragraph 34(h) of Appendix 5 (Specification of Requirements);

**“Statutory Contributions”**

means all statutory contributions which the Provider is responsible for paying in accordance with Clauses 13.2.10 and 13.2.11 of the Contract including but not limited to National Insurance contributions, AWR contributions and pension auto enrolment contributions;

**“Strategic Supplier”**

means those suppliers strategic to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

**“Supporting Documentation”**

means sufficient information in writing to enable the Contracting Authority to reasonably assess whether the Fees, Reimbursable Expenses and other sums due from the Contracting Authority under the Contract detailed in the information are properly payable;

**“Temporary Placement Fees”**

means the Fees payable for Temporary Placements in accordance with Paragraph 1.1 of Annex 1 to Part A of this Appendix;

**“Temporary Worker Pay”**

means the amount payable to a Temporary Worker for a Temporary Placement calculated in accordance with Paragraph 1.2 of Annex 1 to Part A of this Appendix;

**“Tenure Discount”**

means a reduction equal to the percentage for tenure discounting as set out in Annex 2 to Part A of this Appendix; and

**“Variation Form”**

means the Call-Off Terms and Conditions Variation form attached at Appendix 4 of the Contract (the “Variation Form”); and

**“YPO Rebate Fee”**

means the “(D) YPO Rebate” Fee payable by the Contracting Authority to the Provider as set out in Annex 2 to Part A of this Appendix.



## **Part A: Fees and Invoicing**

### **1. Fees**

- 1.1 The Fees:
  - 1.1.1 shall be calculated in accordance with the terms of this Appendix; and
  - 1.1.2 cannot be increased except as specifically permitted by this Appendix.
- 1.2 Any variation to the Fees payable under this Contract must be agreed between the Provider and the Contracting Authority and implemented using the procedure set out in this Appendix.

### **2. Pricing and Charging Mechanisms**

- 2.1 The Fees shall be calculated in accordance with the charging mechanisms set out in Annex 1 to Part A of this Appendix and on the basis of the rates and prices specified in Annex 2 to Part A of this Appendix.

### **3. Reimbursable Expenses**

- 3.1 Except as expressly set out in Paragraph 3.2 below, the Fees shall include all costs and expenses relating to the provision of the Services and the Provider's performance of its obligations under this Contract. No further amounts shall be payable by the Contracting Authority to the Provider in respect of such performance, including in respect of matters such as:
  - 3.1.1 any incidental expenses that the Provider incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Staff, including network or data interchange costs or other telecommunications charges; or
  - 3.1.2 any amount for any services provided or costs incurred by the Provider prior to the Commencement Date.
- 3.2 Expenses shall only be recoverable where:
  - 3.2.1 Annex 1 to Part A of this Appendix states that recovery is permitted; and
  - 3.2.2 they are Reimbursable Expenses and are supported by Supporting Documentation.
- 3.3 The Contracting Authority's current interim contractor travel and expenses policy is contained in Annex F to Appendix 5 (Specification of Requirements).

### **4. Adjustments to the Fees**

- 4.1 The Fees will be firm for the first two (2) years following the Commencement Date (the date of expiry of such period is a "**Review Date**"). After this Fees can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").
- 4.2 The Provider shall give the Contracting Authority at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Provider does not give notice in time then it will only be able to request an increase prior to the next Review Date.



- 4.3 Any notice requesting an increase shall include:
- 4.3.1 a list of the Fees to be reviewed;
- 4.3.2 for each of the Fees under review, written evidence of the justification for the requested increase including:
- (a) a breakdown of the profit and cost components that comprise the relevant part of the Fees;
  - (b) details of the movement in the different identified cost components of the relevant Fee;
  - (c) reasons for the movement in the different identified cost components of the relevant Fee;
  - (d) evidence that the Provider has attempted to mitigate against the increase in the relevant cost components; and
  - (e) evidence that the Provider's profit component of the relevant Fee is no greater than that applying to Fees using the same pricing mechanism as at the Commencement Date.
- 4.4 The Contracting Authority shall consider each request for a price increase. The Contracting Authority may Consent to an increase at its sole discretion.
- 4.5 Where the Contracting Authority Consents to an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Contracting Authority may determine at its sole discretion.
- 4.6 The Fees can also be varied, in accordance with Clause 18.3 of the Contract, in the event that statutory changes, or the application of enhanced statutory rights (including but not limited to pension increases), have the effect of increasing the direct costs of providing the Services or remunerating the Temporary Workers. The Provider shall request an adjustment to the Fees pursuant to Clause 18.3 of the Contract by written notice to the Contracting Authority including the details set out in Paragraph 4.3 above.
- 4.7 The Parties shall agree any adjustments to the Fees pursuant to this Paragraph 4 by completing the Variation Form. Any such adjustments shall not be valid until the Parties have signed the Variation Form and appended it to the Order Form.
- 4.8 Any request for a price increase submitted by the Provider pursuant to this Paragraph 4 shall not exceed the prices in the Provider's pricing matrices set out in Schedule 2 of the Framework Agreement.

## **5. Invoicing**

- 5.1 The Contracting Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 5.2 If the Provider proposes to submit for payment an invoice that does not comply with the European Standard the Provider shall:
- 5.2.1 comply with the requirements of the Contracting Authority's e-invoicing system;
  - 5.2.2 prepare and provide to the Contracting Authority for approval of the format a template invoice within ten (10) Working Days of the Commencement Date which shall include, as a minimum the details set out in Paragraph 5.3 together with such other information as the Contracting Authority may



- reasonably require to assess whether the Fees that will be detailed therein are properly payable; and
- 5.2.3 make such amendments as may be reasonably required by the Contracting Authority if the template invoice outlined in Paragraph 5.2.2 is not approved by the Contracting Authority.
- 5.3 The Provider shall ensure that each invoice is submitted in the correct format for the Contracting Authority's e-invoicing system, or that it contains the following information:
- 5.3.1 the date of the invoice;
- 5.3.2 a unique invoice number;
- 5.3.3 the Month or other period(s) to which the relevant Fee(s) relate;
- 5.3.4 the correct reference for this Contract;
- 5.3.5 the purchase order for this Contract;
- 5.3.6 the total amount payable by the Contracting Authority;
- 5.3.7 details of any CA Rebates or similar deductions that shall apply to the Fees detailed on the invoice (including any refund due to the Contracting Authority pursuant to Clause 13.6.8 of the Contract and the refund scale in the Order Form);
- 5.3.8 a contact name and telephone number of a responsible person in the Provider's finance department in the event of administrative queries; and
- 5.3.9 the banking details for payment to the Provider via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 5.4 The Provider shall provide a breakdown of the costs equal to the invoice value in accordance with Paragraph 48(c) of Appendix 5 (Specification of Requirements)].
- 5.5 The Provider shall invoice the Contracting Authority in respect of the Services in accordance with the requirements of this Appendix.
- 5.6 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Contracting Authority as to what constitutes Supporting Documentation shall not be conclusive and the Provider undertakes to provide to the Contracting Authority any other documentation reasonably required by the Contracting Authority from time to time to substantiate an invoice.
- 5.7 The Provider shall submit all invoices and Supporting Documentation through the Vendor Management System and via encrypted email to: [This has been redacted] with a copy (again including any Supporting Documentation) to such other person and at such place as the Contracting Authority may notify to the Provider from time to time.
- 5.8 All Provider invoices shall be expressed in sterling or such other currency as shall be permitted by the Contracting Authority in writing.
- 5.9 The Contracting Authority shall regard an invoice as valid only if it complies with the provisions of this Paragraph 5. Where any invoice does not conform to the Contracting Authority's requirements set out in this Paragraph 5, the Contracting Authority shall promptly return the disputed invoice to the Provider and the Provider shall promptly issue a replacement invoice which shall comply with such requirements.
- 5.10 If the Contracting Authority fails to consider and verify an invoice in accordance with Paragraph 5.8, the invoice shall be regarded as valid and undisputed for the purpose of Clause 19.1 of the Contract after a reasonable time has passed.



- 5.11 Unless the Parties agree otherwise in writing, all Provider invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Provider has specified on its invoice.



## Annex 1: Charging Mechanisms

### 1. Fees payable for Temporary Placements

- 1.1 The Fees payable for Temporary Placements (the “**Temporary Placement Fees**”) shall comprise of the following fee components:
  - 1.1.1 The Temporary Placement Costs which include: (a) the Temporary Worker Pay, (b) the Statutory Contributions; and (c) the Reimbursable Expenses;
  - 1.1.2 The Management Fee, or the Pre-Identified (Nominated) Worker Fee (as applicable);
  - 1.1.3 The Agency Fee; and
  - 1.1.4 The YPO Rebate Fee.
- 1.2 The Temporary Worker Pay shall be calculated on either (i) a time and materials basis (day rate and number of days worked); or (ii) a fixed price (statement of work) basis. The Contracting Authority and the Provider shall agree which pricing mechanism will apply to calculate the Temporary Worker Pay for each Temporary Placement.
- 1.3 For Statement of Work Placements, the Temporary Worker Pay shall be calculated at a fixed price based on the day rate and an estimate of the number of days to be worked by the Temporary Worker as agreed prior to the commencement of the Temporary Placement.
- 1.4 Reimbursable Expenses shall only be recoverable for Temporary Workers that are determined to be Inside OPWR.
- 1.5 The Management Fee shall be calculated as follows:
  - 1.5.1 Where the Provider directly sources a Temporary Worker, the “*(C) MSP direct sourcing fee*” set out in Annex 2 to Part A of this Appendix shall apply; and
  - 1.5.2 Where the Provider utilises its supply chain to source a Temporary Worker, the “*(A) Managed Service Provider (MSP)/Management Fee*” set out in Annex 2 to Part A of this Appendix shall apply.
- 1.6 The Agency Fee shall be calculated using the “*(B) Agency mark up/fee, (£ per day)*” set out in Annex 2 to Part A of this Appendix.
- 1.7 For Statement of Work Placements, the Management Fee, the Agency Fee or the Pre-Identified (Nominated) Worker Fee (as applicable) shall be calculated based on the estimate of the number of days to be worked by the Temporary Worker which determined the Temporary Worker Pay in accordance with Paragraph 1.3.
- 1.8 The Management Fee payable in respect of a Temporary Placement that exceeds six (6) months shall be reduced by the Tenure Discount from the first day following the expiry of the initial six (6) month period of the Temporary Placement. The Tenure Discount does not apply where the Pre-Identified (Nominated) Worker Fee is payable by the Contracting Authority for a Temporary Placement.



- 1.9 The Temporary Placement Fees shall be invoiced by the Provider monthly in arrears in accordance with the requirements of Paragraph 5 of Part A of this Appendix.
- 1.10 The Provider shall, in accordance with Clause 19.3 of the Contract, ensure that all invoices submitted to the Contracting Authority for the Temporary Placement Fees are exclusive of the Retrospective Payment.
- 1.11 The Provider shall set-off the value of any CA Rebates against the appropriate invoice in accordance with Paragraph 2 of Annex 1 to Part B of Appendix 8 (Performance Management).

## **2. Fees payable for Additional Services**

- 2.1 If, pursuant to Clause 12.7 of the Contract, the Contracting Authority requests a variation to the Services to require the Provider to deliver any of the Additional Services, the Fees payable for the Provider to deliver the Additional Services shall be calculated by reference to the rates and prices set out in Annex 2 to Part A of this Appendix.
- 2.2 The Contracting Authority and the Provider shall agree the charging mechanisms that will apply to calculate the Fees payable for any Additional Services required by the Contracting Authority in accordance with Clause 12.7 of the Contract by completing the Variation Form. Any variation to the Contract shall not be valid until the Parties have signed the Variation Form and appended it to the Order Form.





## Annex 2: Pricing Mechanisms

[This has been redacted]



## Optional Additional Services

[This has been redacted]

### Key Notes:

1. This will not be formally evaluated and scored.
2. This reflects Annex B of the Specification of Requirements, and represents only a selection of the HR services available under the YPO 942 framework (as outlined within Appendix 3 of the Order Form).
3. Tenderers are requested to submit a cost breakdown behind each service line and cost quoted (maximum 1 page per service line), outlining how each quote has been calculated. This will be referred to during the contract term if the Contracting Authority wishes to request any such Additional Services. These are indicative and for information purposes only, and the Contracting Authority's particular requirements will be discussed during the contract term with the Provider if required.
4. Access to any such Additional Services via the Contract will be agreed as per the Variation Procedure.

## **Part B: Financial Transparency Objectives and Open Book Data**

### **1. Financial Transparency Objectives**

- 1.1 The Provider acknowledges that the provisions of Part B of this Appendix are designed (inter alia) to facilitate, and the Provider shall co-operate with the Contracting Authority in order to achieve, the following objectives:

#### **1.1.1 Understanding the Fees**

- (a) for the Contracting Authority to understand any payment sought from it by the Provider;

#### **1.1.2 Agreeing the impact of Variation**

- (a) for both Parties to agree the quantitative impact of any Variation that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Provider's Fees;
- (b) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

#### **1.1.3 Continuous improvement**

- (a) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (b) to enable the Contracting Authority to demonstrate that it is achieving value for money for the taxpayer relative to current market prices,

(together the "**Financial Transparency Objectives**").

### **2. Open Book Data**

- 2.1 The Provider acknowledges the importance to the Contracting Authority of the Financial Transparency Objectives and the Contracting Authority's need for complete transparency in the way in which the Fees are calculated.

- 2.2 During the Term, and for a period of 7 years following the end of the Term, the Provider shall:

2.2.1 maintain and retain the Open Book Data; and

2.2.2 disclose and allow the Contracting Authority and/or the Auditor access to the Open Book Data.

### **3. Onerous Contracts**

- 3.1 If the Provider publicly designates the Contract as an Onerous Contract (including where the Provider has identified the Contract as such in any published accounts or public reports and announcements), the Provider shall promptly notify the Contracting Authority of the designation and shall prepare and deliver to the Contracting Authority within the timescales agreed by the Parties (and in any event, no later than two (2)

months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- 3.1.1 an initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
  - 3.1.2 an initial risk analysis and impact assessment on the provision of the Services as a result of the Provider's designation of the Contract as an Onerous Contract;
  - 3.1.3 the measures which the Provider intends to put in place to minimise and mitigate any adverse impact on the provision of the Services; and
  - 3.1.4 details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Contracting Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, such final form report to be agreed no later than one (1) month following the Contracting Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Parties shall meet within fourteen (14) Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Provider is a Strategic Supplier; and the senior responsible officers (or equivalent) for each Party).
- 3.4 The Provider acknowledges and agrees that the report is submitted to the Contracting Authority on an information only basis and the Contracting Authority's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Provider of any liability under this Contract. Any Variation to be agreed by the Parties pursuant to the report shall be subject to the Variation Procedure.

**Appendix 3:**  
**ADDITIONAL SERVICES**

HR Additional Service Category	HR Additional Service
<b>Recruitment</b>	Permanent recruitment
	Recruitment Process Support (Screening/Interviewing)
	Provider employed consultants
	Project work
	Statement of Work
	Other areas of recruitment
<b>Corporate HR services</b>	Project & portfolio management
	Risk auditing
	HR audit
	HR Administration
	Change management
	Equality, Diversity & Inclusion (ED&I) analysis and evaluation
	Quality management
	Other corporate HR services
<b>Payroll &amp; Benefits</b>	Pension management and administration
	Payroll management
	Employee benefits
	Background and employment statutory checks including vetting
	DBS checks
	Benefits & rewards
	Salary reviews
	Flexible working
	Data analytics
	Flexible benefits
	Other Payroll & Benefits
<b>Talent Management</b>	HR Skills
	Employee development (Inc. appraisals, KPIs, training/talent/development)
	Performance management (inc ability / psychometric testing, analysis, reviews)
	Talent pool management and systems
	Assessment centres
	Recruitment management - applicant tracking and attraction, web recruitment
	Managed learning programmes
	Employment training
	Other Talent management
	TUPE management

<b>People and HR Management</b>	Restructure Management
	People management (Inc absence, new starters/leavers, discipline management)
	Redundancy
	HR Software solutions including VMS
	HR management – training and development, skills management
	Diversity & Inclusivity
	Job Evaluation
	Onboarding
	Career Transition
	Outplacement
	Employee wellbeing
	Employee engagement
	Other People and HR management
<b>Outcome focused</b>	All outcome focused services

**Appendix 4****CALL-OFF TERMS AND CONDITIONS VARIATION FORM****CALL-OFF TERMS AND CONDITIONS FOR SERVICES**

Lot 2 – Managing Temporary Recruitment for Central Government

**No of Order Form being varied:**.....

**Variation Form No:**.....

**BETWEEN:**

The Secretary of State for the Department for International Trade, of Old Admiralty Building, Westminster, London, SW1A 2BL ("**the Contracting Authority**")

and

Hays Specialist Recruitment Limited ("**the Provider**")

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Contracting Authority**

Signature .....

Date .....

Name in Capitals .....

Address .....

.....

**Authorised to sign for and on behalf of the Provider**

Signature .....

Date .....

Name in Capitals .....

Address .....

.....

.....

.....



Appendix 5:

SPECIFICATION OF REQUIREMENTS



# **Specification of** **Requirements**

## **Provision of Temporary Workers and Associated Services**

**YPO 942: Managing Temporary and Permanent Recruitment**

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## **Section 1**

Unless otherwise specified, “Contract” in this Appendix 5 (Specification of Requirements) means the written agreement between the Contracting Authority and the Provider consisting of the Order Form and the Call-Off Terms and Conditions (to which this Appendix 5 is appended).

### **Introduction**

1. The Department for International Trade (the “Contracting Authority”) is procuring a new service Provider for the provision of Temporary Workers (as defined in Clause 1 (Interpretation) of the Contract) and any associated services. This Appendix 5 (Specification of Requirements) sets out additional requirements to those outlined in the YPO 942 Lot 2 specification.
2. The Contracting Authority is seeking a Managed Service Provider (“Provider”) that must meet the following objectives:
  - Transition and onboarding of the Contracting Authority’s Temporary Worker population from the incumbent provider of Temporary Worker and associated services as defined in Paragraph 1 of Appendix 6 (Implementation Plan Details) (the “Incumbent”). Management of the entire Temporary Worker population, including but not limited to the wider supply chain, payroll, and administration;
  - Support the Contracting Authority’s implementation of a strategic workforce management approach, progressing towards achieving the best industry practice of total talent management;
  - Successfully fulfil sourcing of both of the following types of role across the United Kingdom, catering to the Contracting Authority’s resourcing needs in all four nations:
    - Generalist roles (generally defined as a role which a Civil Servant could fulfil, or expertise that can be found within the Civil Service. For example, roles within corporate functions); and
    - Specialist roles (generally defined as a role which requires specific experience or expertise, e.g. niche sector knowledge, which cannot typically be found within the Civil Service);
  - Provide an effective and secure Vendor Management System (“VMS”);
  - Provide effective account and contract management, supporting the Contracting Authority in all areas relating to the Contract in a timely manner.
3. The Contracting Authority is seeking to implement a hybrid (outcomes-focused) service delivery model, which meets its bespoke needs as a central Government Department. The Contracting Authority therefore encourages the offer of innovative and flexible solutions which both meets the stated service requirements and is cost-effective. The Contracting Authority has aggregated its requirements to support a holistic and efficient commercial and operational model, however if the Contracting Authority does not feel it is achieving value for money under this Contract, the Contracting Authority reserves the right to meet its requirements via alternative routes as the Contract is non-exclusive.
4. The Contracting Authority wishes to utilise such a hybrid service delivery model to leverage the benefits of both traditional industry master vendor and neutral vendor service delivery models. For Specialist roles the Contracting Authority wishes to draw upon the wider talent pool available from a diverse supply chain across the United Kingdom (not just focused on London and the South-East). The Contracting Authority will determine the classification of each role requirement (Generalist or Specialist) and the Provider will be required to source prospective candidates from its wider supply chain for Specialist roles (e.g. leverage their supply chain to field a diverse field of suitable candidates). The Contracting Authority has selected an outcome-based service delivery model and is therefore solution-agnostic, focusing instead on meeting its overarching requirements in a cost-effective manner.
5. The solution may be required to mould and flex to deliver the aims and outcomes of the Contracting Authority, as such the shape of the service may change throughout the duration of the Contract to incorporate any of the Additional Services. This will be discussed with the Provider and

evolve as the partnership evolves. The Contracting Authority and the Provider shall agree the inclusion of any of the Additional Services required by the Contracting Authority during the Term in accordance with the Variation Procedure and Regulation 72 of the Public Contracts Regulations 2015. The Provider will be required to deliver all the temporary recruitment needs, whilst also including any Additional Services within the YPO framework specification. These may be added at any point in time over the duration of the Contract as requested by the Contracting Authority.

6. This Contract will be accessed (via the Contracting Authority) by any Crown body, as well as any public bodies associated with the Contracting Authority (including arm's length bodies and non-departmental public bodies).

## Background

7. The Contracting Authority is currently active across 19 sectors of the economy, supporting UK companies to export to potentially 109 overseas markets, as well as attracting inward investment into the UK. The Contracting Authority's current departmental priorities are to:
  - Secure world-class free trade agreements and reduce market access barriers, ensuring that consumers and businesses can benefit from both;
  - Deliver economic growth to all the nations and regions of the UK through attracting and retaining inward investment;
  - Support UK business to take full advantage of trade opportunities, including those arising from delivering FTAs, facilitating UK exports; and
  - Champion the rules-based international trading system and operate the UK's new trading system, including protecting UK businesses from unfair trade practices.
8. As a department formed following the EU referendum in 2016, the emphasis over recent years has been on rapid growth and building capability, particularly trade expertise. The skills and capabilities required to build a future foundation for trade and investment, as an independent nation, had not existed for over 40 years within the U.K. The Contracting Authority's approach to acquiring skills has been to make sensible judgements on where to grow enduring capabilities or exercise the use of Temporary Workers. The Contracting Authority has utilised the services of Temporary Workers, namely 'Generalist' and 'Specialist' Temporary Workers, to augment teams across its various directorates, functions, and public bodies. Temporary Workers have provided critical, in-demand expertise and have been invaluable to the progress that the Contracting Authority has made in securing numerous trade and export successes.
9. As the Contracting Authority increases its maturity as a department, we now need to focus core capability and capacity in the areas that help the Contracting Authority achieve its strategic objectives. Through workforce planning there is a clear requirement for a mixture of permanent Civil Servants, temporary surge resources, and access to technical expertise required for the delivery of key programmes. This means making decisions on the composition of our workforce, where the Contracting Authority needs to grow Civil Service capabilities or where the use of Temporary Workers can help bring in skills for a defined period to achieve specific outcomes and provide the requisite workforce flexibility, without ongoing financial and resourcing liabilities. Meeting the Contracting Authority's resourcing needs now and in the future is crucial to the achievement of the Contracting Authority's strategic objectives.
10. As of 17 May 2021, the Contracting Authority's Temporary Worker population available for transition to the next service Provider is [This has been redacted]. This is indicative and subject to change; the Contracting Authority will confirm the final number to be transitioned to the Provider following the award of the Contract. Details of the entities the Provider will need to engage with (for the transfer of Temporary Workers) will be shared with the Provider following the commencement of the Contract. The number of commercial entities currently associated with the Temporary Worker population (Incumbent's supply chain) is approximately [This has been redacted], and the final number will be confirmed following the award of the Contract.
11. To support the Provider's understanding of the Contracting Authority's typical role requirements per annum, please see historical demand data in Annex E for information. The primary users of Temporary Workers within the Contracting Authority are [This has been redacted] directorates.

12. The Contracting Authority places significant value on the consistent performance of systems and technology where the Contracting Authority's interaction with systems is not reliant on frequent human intervention and data pull through across multiple systems. This is consistent with the wider ambitions of Her Majesty's Government (HMG) and the Contracting Authority to increase levels of automation used.
13. Transitioning to a new contract represents an opportunity to implement a resourcing contract that supports wider workforce ambitions, such as:
  - deliver improved access to Specialist role candidates within the wider supply chain (not just candidates put forward by a master vendor), engaging a wide array of Small and Medium Enterprises (SMEs) across the UK, and leveraging a larger and diverse talent pool;
  - a more efficient operational process through increased utilisation of technology;
  - a leaner management framework;
  - better data reporting, to inform decision-making and act as a key enabler for the Contracting Authority's strategic workforce approach.
14. In addition to the core provision of Temporary Workers, this is an opportunity to test the market regarding elements of permanent resourcing e.g., outsourced support and technology solutions that will help solve some of our biggest permanent resourcing challenges. Incorporating optional permanent recruitment services would enable a more integrated approach to workforce management and resourcing. This would provide the Contracting Authority with a more holistic picture of the availability of skills across the labour market, and therefore bring greater insight about where the Department may need to enhance our approach to resourcing and/or retention of skills.
15. COVID-19 saw an increase in the number of new Temporary Worker requests across the department, as the Contracting Authority required additional workforce flexibility because of rapid deployments and needing to resource new activity at pace. This workforce agility needs to be maintained for future scenarios where our workforce capacity and capability may need to be quickly supplemented at pace.
16. Most of the Contracting Authority's Temporary Worker population is currently based in London. In accordance with HMG's Levelling Up agenda, the Contracting Authority has ambitions to become more representative across the UK. The Contracting Authority is establishing additional hubs in the Devolved Administrations (Cardiff, Belfast and Edinburgh) and the Northern Economic Campus in Darlington. As the Contracting Authority seeks to be representative of the communities it serves across the United Kingdom, it is conceivable that the Contracting Authority may need to be more closely aligned to the businesses and communities who it assists, and therefore the Provider must have an operational footprint across the entire UK in order to facilitate the Contracting Authority's potential demand across the nations.

## **Section 2**

### **Requirements**

#### **(A) Transition**

17. The Contracting Authority intends to set out a 12-week transition period prior to the end of the current contract on 27 April 2022 (to be conducted between December 2020/January 2021 – April 2022), enabling the incoming Provider to complete mobilisation activities. The Provider must account for the successful transfer of up to 300 Temporary Workers from the Incumbent to the Provider within the 12-week transition period, and the Contracting Authority will confirm to the Provider the final number to be transferred following the commencement of the Contract.
  
18. As part of the Contracting Authority's published evaluation criteria, all tenderers will be required to submit an Outline Implementation Plan during the tender process. Following the commencement of the Contract, the Provider's Outline Implementation Plan will be discussed between the Contracting Authority, the Provider and the Incumbent in order to agree upon the Detailed Implementation Plan to be adhered to during the Transition Period. The Implementation Plan will set out a number of Milestones which the Provider must meet in order to ensure a smooth continuity of service to the Contracting Authority.
  
19. The Transition Period covers both mobilisation (preparing for implementation) and implementation (delivering the activities) and should be completed within the 12-week period. The Provider must meet the requirements for mobilisation and implementation set out in this paragraph at a minimum, however this is not exhaustive. The Provider shall ensure that the Implementation Plan:
  - a. Outlines the Milestones and timescales within which these are to be achieved within the 12-week period, alongside the Provider's proposed strategy to successfully complete the Implementation Plan.
  - b. Lists all activities and timescales to complete mobilisation and to highlight the inputs/information expected from the Incumbent and the Contracting Authority, such activities to include the Contracting Authority and the Provider agreeing the structure of the quarterly data reports on the diversity of the Temporary Worker workforce within the Contracting Authority in accordance with the requirements set out at Paragraph 56(e) below.
  - c. Includes:
    - i. Details of start and end dates for specific activities.
    - ii. Detailed plan for the transfer of the Contracting Authority's Temporary Worker population from the Incumbent to the Provider.
    - iii. Detailed arrangements for the configuration of the VMS to meet the Contracting Authority's requirements.
    - iv. Detailed arrangements for the testing of the VMS with Contracting Authority users of the Services, such as Civil Servants working in the corporate functions and hiring managers (user acceptance testing). This includes: (i) testing of the full end-to-end recruitment process on the VMS, alongside management information and data reporting functionality; and (ii) addressing any necessary changes to processes, ways of working or to the VMS that are required.
    - v. The provision of evidence to support a cyber security and data protection assessment of the Provider's proposed VMS solution (this must satisfy the Contracting Authority's information and risk assurance process).
    - vi. Arrangements for user training of the VMS and understanding of the Provider's overall service delivery model.
    - vii. Arrangements for the preparation of operational service delivery.
    - viii. Includes a Provider resource profile, including skill sets, for the successful delivery of all aspects of transition, broken down by each phase. This should include any expected Incumbent and Contracting Authority counterparts/personnel to support the Provider in its successful delivery of the transition/implementation outcomes.

- ix. Includes a communication strategy focused on both Contracting Authority hiring managers and Temporary Workers (including where required associated entities or agencies) transitioning to the Provider from the Incumbent. As noted in paragraph 10, the Contracting Authority and/or the Incumbent will share the details of the entities the Provider will need to engage with (for the transfer of Temporary Workers) following the commencement of the Contract.
  - x. Includes active retention initiatives to help support retention of the Incumbent's Temporary Worker population and their transition/transfer to the Provider. Each Temporary Worker's pay rate at the point of transition will be expected to remain the same when they are contracted with the Provider or via the Provider's supply chain. The Provider must not increase the risk of Temporary Workers failing to transition/transfer to the Provider due to the Provider offering unfavourable terms to them during the Transition Period. The Contracting Authority expects the smooth transition/transfer of all Temporary Workers from the Incumbent to the Provider during the Transition Period.
  - xi. Includes detailed arrangements for how the Provider will manage risks (and proposed mitigations), assumptions, issues and dependencies (RAID) during the Transition Period.
  - xii. Provides for the user acceptance testing requirements set out in Paragraph 19(c)(iv) (which shall be identified as a Milestone in the Implementation Plan) to be completed by the expiry of the first 6-week period of the Transition Period (which shall be identified as a Milestone Date in the Implementation Plan) .
20. As of 17 May 2021, the Contracting Authority's Temporary Worker population available for transition to the Provider is [This has been redacted]. This is indicative and subject to change; the Contracting Authority will confirm the final number to be transitioned to the Provider following the commencement of the Contract. The number of commercial entities associated with the Temporary Worker population (Incumbent's supply chain) is [This has been redacted], and similarly this is indicative, and the final number will be confirmed following the award of the Contract.
21. The Transition Period is considered critical by the Contracting Authority and the Provider will be expected to utilise its significant industry experience and leadership to drive the overall process, whilst communicating effectively and managing risks in a proactive manner.
22. Weekly meetings between the Provider, Contracting Authority, and Incumbent will take place during the transition to ensure progress is made in accordance with the Implementation Plan.
23. All costs associated with the successful completion of transition within a 12-week period must be accounted for within the Provider's submitted Pricing Schedule Template.

## **(B) Vendor Management System (VMS)**

24. The Contracting Authority requires the Provider to deploy an efficient and effective single VMS to enable holistic management of the Temporary Worker population and tailored data reporting to support strategic decision-making. Utilisation of a VMS as the single point of truth will support reduction of contact time between the Contracting Authority's HR function and hiring manager population across the wider organisation, yielding operational efficiencies.
25. In addition to the requirements set out in Clause 13.7 of the Call-Off Terms and Conditions, the Provider will maintain a secure and easy to use web-based VMS that:
- a. Enables the Contracting Authority to operate the end-to-end Temporary Worker process:
    - i. Logging of a Temporary Worker request (including ability to cancel if needed).
    - ii. Recording of four separate approvals – HR, Commercial, Finance, and respective Director-General.
    - iii. Recording of OPWR status.

- iv. View candidate documentation to support interview process and candidate selection.
- v. Logging of necessary security checks (all Temporary Workers must evidence a BPSS check, please refer to the following link for further details: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>). The Provider must complete a BPSS check for each new Temporary Worker. The Contracting Authority will manage the security clearance process where a role requires CTC (Counter Terrorist Check), SC (Security Check), or DV (Developed Vetting), please refer to the link above for further details. The Provider must ensure that a Candidate is likely to pass the requisite security clearance process outlined by the Contracting Authority in the resourcing request, when they are put forward for consideration by the hiring manager. \_
- vi. Electronic time sheeting – completed by Temporary Worker and sent to specified Contracting Authority staff for approval. The VMS must send reminders to ensure timely completion of timesheet logging and respective approvals, to avoid late or delayed payments.
- vii. Electronic invoicing and or/payment systems.
- viii. User account management, e.g., setting up and closing new users.
- ix. Real-time management reporting – must be updated within 24 hours.
- x. Provide performance feedback on the Temporary Worker.
- xi. Record the Temporary Worker's contract end date and their status (e.g., onboarding, engaged, extension pending, etc.).
- b. Allows the implementation of multiple users with tiered levels of access and rights:
  - i. Basic User (e.g., hiring manager; [This has been redacted]): able to request new Temporary Workers and can view their own requests.
  - ii. Approver ([This has been redacted]): can view across all areas, download data reports, make comments, and put approve Temporary Worker requests.
  - iii. Super User ([This has been redacted]): full rights - can add, edit, remove, view all areas, and download data reports.
- c. Provides an intuitive dashboard upon logging in (for Approvers and Super Users only), which highlights current requests as well as key or common metrics, e.g., composition of Temporary Worker population by different categories (such as by directorates, by OPWR status, etc.).
- d. Allows for provision of real-time data, to include (but not limited to): weekly starters/leavers; total Temporary Worker population broken down by the Contracting Authority's organisational structure; total tenure; total cost; Equality Diversity & Inclusion data; personal data in accordance with Clause 13.2.17 of the Contract.
- e. Provides notifications (including within the VMS and automated email prompts) at key stages of the process with all stakeholders, to support a timely process, effective communication, and compliance with Key Performance Indicators (KPIs).
- f. Allows recording of different assignments against an individual Temporary Worker and performance feedback, e.g., comments and/or exit interview information to be made available to the Contracting Authority (e.g. future hiring managers) of the same individual.
- g. Offer an intuitive interface requiring little or no training. Where necessary the Provider will offer full training for Contracting Authority users as required, with regular refresher training courses held at periods no longer than 6 months.
- h. Provides an alert system (e.g. via email) to alert users (hiring manager plus any additional named users) to new Temporary Workers starting or leaving.
- i. The VMS must:
  - i. Be compliant with web, accessibility, data protection/UK GDPR and security standards required by the Contracting Authority (requirements outlined in paragraph 38 and 45).
  - ii. Provide robust resilience, disaster recovery and business continuity arrangements including system backup arrangements.
  - iii. Be compliant with accessibility requirements, such as No. 2 Accessibility Regulations 2018 under the Equality Act 2010.
  - iv. Be accessible to authorised users at all times (except during scheduled maintenance outside of core business hours).
  - v. Provide a managed on-line user help service and relevant guidance.
  - vi. Be supported by a service desk/help desk service to provide resolution and feedback within agreed timeframes, outlined in KPIs 3 and 5.
  - vii. Include an escalation process for resolution of any VMS system issues.



- viii. Provide managed system updates and releases on a regular basis with minimal impact on users.
26. The Provider must demonstrate flexibility to enact change processes for the VMS in accordance with Contracting Authority requests.
27. The Provider must have a single timesheet system integrated within the VMS. The timesheet system must allow Temporary Workers to easily submit timesheets each month along with expenses claims or Statement of Work Placement milestone payment claims (if applicable).
- a. The timesheet system must enable Temporary Workers to submit timesheet submissions, expenses claims or Statement of Work Placement milestone payment claims to a timesheet approver of their choice. The VMS must allow Temporary Workers to predetermine two or more timesheet approvers. The Provider must also enable each Temporary Worker's hiring manager or a Super User to change a Temporary Worker's timesheet approvers quickly and easily.
  - b. Once a timesheet, expenses claim or Statement of Work Placement milestone payment claim has been submitted by a Temporary Worker to a timesheet approver, the VMS must automatically notify the timesheet approver via email that they have a submission to approve (with reminders automatically sent if approvals not provided within 3 Working Days). There must be functionality to report on late submissions.
  - c. The VMS must offer a clear and intuitive method for timesheet approvers to review and approve submissions:
    - i. For timesheet submissions this must include a clear presentation of the working days that have been submitted by the Temporary Workers for the month;
    - ii. For expenses claims, this must include the ability for the Temporary Worker to submit supporting evidence and/or a statement confirming the validity of the claim;
    - iii. For Statement of Work Placement milestone payment claims, this must include the ability for the Temporary Worker to submit supporting evidence and/or a statement confirming the validity of the claim.
28. The VMS will be provided on a standalone basis and will not be integrated with the Contracting Authority's systems. The Provider shall ensure that all of the Contracting Authority Data as defined in Appendix 10 (Exit Management) can be extracted from the VMS for the purposes of migrating the Contracting Authority Data to the Contracting Authority and/or the Replacement Provider on the expiry or termination of the Contract.
29. Each Temporary Worker's pay to-date must be visible on the VMS. For Temporary Workers engaged on a Statement of Work Placement basis, the cumulative pay compared to the total agreed project value will be recorded on the VMS. For example, for a four-month contract from July-October with a total value of £10,000, the VMS would show clearly that on XX September a total of £X/£10,000 had been paid so far.

### **(C) Sourcing of Future Temporary Workers**

30. There will be no spend or volume commitments under this Contract. However, the Contracting Authority intends to utilise this Contract as its principal resourcing contract, subject to the competitiveness of the Provider's rate card and overall pricing. The Contracting Authority currently (and will continue to) utilise Crown Commercial Service (CCS) framework agreements (such as Public Sector Resourcing (RM3749)) to meet any requirements which cannot be met through the principal contract (or where the Contract pricing is not competitive compared to alternative routes).
31. For Specialist roles the Contracting Authority will require these to be shared with the Provider's wider supply chain, in order to leverage a wider and diverse talent pool, reach greater geographical coverage across the UK, and to stimulate a healthy level of competition.
32. To support the Provider's understanding of the Contracting Authority's typical requirements per annum, Appendix 1 details the type of roles previously in demand across two financial years.

33. Annex D provides an overview of the current process flow for Temporary Worker requests. This process flow sets out in broad terms the responsibilities of various stakeholders, including several activities required to be completed by the Provider.
34. In addition to the requirements set out in Clause 13 of the Call-Off Terms and Conditions, the Provider will:
- a. Within 1 Working Day of the receipt of all Contracting Authority internal approvals for the resourcing request, contact the hiring manager to arrange a briefing call for all new roles and will ensure that sufficient information is collected from the hiring manager to enable the Provider to source candidates with the appropriate skills and experience at the proposed pay rate.
  - b. Supply candidates:
    - i. Who most closely meet the job description and person specification provided by the hiring manager in accordance with clause 13.1.7 in the Call-Off Terms and Conditions.
    - ii. Across the full spectrum of job categories/types (see Annex E for the types of roles historically sourced).
    - iii. Across the UK, with particular focus on the Contracting Authority's hub locations in Cardiff, Belfast, Edinburgh, and Darlington.
    - iv. Who possess (or are likely to pass) the requisite level of security clearance as outlined by the hiring manager. The Provider is responsible for evidencing BPSS clearances for all Temporary Workers, however the Contracting Authority will manage the completion of security clearances higher than BPSS. The Provider must not put forward candidates who are unlikely to meet HMG security clearance requirements.
    - v. Are eligible to work in the UK and have had their identity verified – this includes the right to work for the Civil Service, i.e. the Civil Service Nationality Rules in accordance with clause 13.1.11 of the Call-Off Terms and Conditions.
  - c. Pre-screen CVs to remove unsuitable candidates prior to submission to hiring managers.
  - d. Identify at least two suitable candidates per temporary role and submit their CVs within the timescales set out below. The suitability of the candidates shall be determined by the Contracting Authority (acting reasonably) having regard to the criteria specified in the assignment details.
    - i. The Provider shall submit CVs for Generalist temporary roles within 5 Working Days of the briefing call with the hiring manager; and
    - ii. The Provider shall submit CVs for Specialist temporary roles within 15 Working Days of the briefing call with the hiring manager.
  - e. Manage candidates through to interview, including providing feedback at outcome stage.
  - f. Provide hiring managers with support through provision of:
    - i. Typical market pay rates for the specific role required.
    - ii. Market analysis, including the availability of certain skillsets (as outlined at *Annex B and in Appendix 1*) in the market.
    - iii. Provide advice to hiring managers on the wording of job descriptions for hard to fill roles based on the knowledge of the market.
    - iv. Insight into the permanent recruitment market when uploading a Temporary Worker role.
    - v. Innovative solutions for positions that the Provider has specific capability in filling or positions that the Contracting Authority is experiencing challenges in filling.
  - g. Manage the supply chain network, including administration and payroll services.
  - h. Manage candidates through onboarding processes, from offer to checks, including issuing and recording of contract, Status Determination Statement and any conflict of interests. The Contracting Authority will determine the OPWR status of Temporary Workers and will issue a corresponding Status Determination Statement to the Provider and Temporary Worker.
  - i. Ensure Inside OPWR Temporary Workers abide by the Contracting Authority's current interim contractor travel and expenses policy (please see Annex F), where the Contracting Authority will reimburse reasonable expenses properly and necessarily incurred in delivering Services for the Contracting Authority. Temporary Workers will make justifiable spending decisions and seek economy in all expenses occurred, weighing the balance between value for money, public perception and business benefits.

- j. Maintain a talent pool/candidate bank of active reserve list candidates that can be used to fulfil the Contracting Authority's requirements. This talent pool/candidate bank should be tailored to the Contracting Authority's specific requirements throughout the Term through continuous development of insight and understanding of the Contracting Authority's resourcing requirements and trends.
  - k. Manage Temporary Workers leaving and/or contract extension actions with hiring managers, Temporary Workers and the Contracting Authority's HR which shall include, but not be limited to, ensuring that each Temporary Worker returns all Contracting Authority issued equipment (e.g. laptop and security passes) within 5 Working Days of the expiry or termination of their contract/engagement, or 15 Working Days where Covid-19 restrictions are in place and remote collection is required.
35. Pre-Identified (Nominated) Workers:
- 35.1. The Contracting Authority may identify Candidates and refer them to the Provider in accordance with Appendix 11 (Pre-Identified (Nominated) Workers).

## **(D) Governance and Contract Management**

36. The Provider will:
- a. Remain in weekly contact with the Contracting Authority's Contract Manager, alongside the following:
    - i. Monthly operational meetings and formal quarterly Performance Review Meetings.
    - ii. The Contracting Authority reserves the right to request additional meetings to address any matters arising.
    - iii. The matters to be discussed at these meetings include but are not limited to: performance against KPIs; risk management; continuous improvement; relevant contextual updates to support the continued successful delivery of the Services from the Provider.
    - iv. Data dashboard (requirements outlined in paragraph 44) to support monthly operational meetings will need to be provided 2 Working Days in advance of the meeting.
    - v. All key personnel from the Provider and Contracting Authority will need to be in attendance.
    - vi. The Provider will be required to minute the meeting and circulate the minutes to all attendees following the meeting. Both the Contracting Authority and Provider will agree the minutes at the subsequent meeting.
  - b. Demonstrate a commitment to continuous improvement through evaluating previous activities conducted and enhancing subsequent service provision.
  - c. Provide service availability including, but not be limited to, availability of the Provider's VMS during core office hours (9.00am-5.00pm UK time) on Working Days (as defined in Clause 1 (Interpretation) of the Call-Off Terms and Conditions). Weekend availability is not required.
  - d. Provide a dedicated Account Manager to maintain and improve the quality of service provided. The Account Manager will be the primary and single point of contact for the Contracting Authority's Contract Manager.
  - e. Ensure that it maintains sufficiently skilled and experienced personnel to provide the Services in accordance with Good Industry Practice and in a timely fashion in line with Clause 13.1.4 of the Call-Off-Terms and Conditions. The Contracting Authority can request the replacement of any Provider staff in accordance with Clause 13.1.5 of the Call-Off Terms and Conditions.
  - f. As per Clause 16.1 of the Call-Off Terms and Conditions, the Provider will inform the Contracting Authority of any changes to their Key Personnel. The Provider and the Contracting Authority will discuss and agree the Provider's Key Personnel as at the commencement of the Contract during the weekly meetings which shall take place during the Transition Period pursuant to Paragraph 22 of this Specification of Requirements.
37. In accordance with Clause 13 of the Call-Off Terms and Conditions, the Provider will:
- a. Be proactive when managing the Contract, including but not limited to:
    - i. Dealing with and resolving complaints in a timely manner.
    - ii. Rectifying issues following slippages in performance or service standards.
    - iii. Identifying and presenting opportunities to secure additional savings.

- iv. Work to maintain a wide and diverse candidate pool.
- b. Manage a robust complaints procedure that would be followed in the event of complaints from Contracting Authority staff (or staff of any Crown or public body accessing the Services pursuant to Paragraph 6 of Appendix 5 (Specification of Requirements)), or complaints from or about any Temporary Worker(s).
- c. Enable the Contracting Authority to terminate Temporary Workers in accordance with Clause 13.2.7 and 13.2.8 of the Call-Off Terms and Conditions.
- d. Make no charge to the Contracting Authority if a Temporary Worker: fails to attend an assignment at the reporting time; rejects the assignment or does not attend; proves to be unsatisfactory within the first five (5) Working Days of the commencement of the placement. This is in accordance with Clause 13.2.7 of the Call-Off Terms and Conditions.
- e. Ensure that where the Contracting Authority suggests the Temporary Worker is not proposed as a candidate in future due to performance issues or conduct that does not comply with the Civil Service Code, the Temporary Worker is not proposed to the Contracting Authority again.

## **(E) Security, Data and Reporting**

38. The Provider will:

- a. Hold encryption for data at rest AES 256 and in transit TLS1.2. This is mandatory and must be evidenced within the Provider's policies and relevant documents.
- b. Demonstrate software development lifecycle (SDLC) with continuous improvement, update and patching processes. This is mandatory and must be evidenced within the Provider's (or third party if using third party solution) policies and relevant documents.
- c. Have Identity and Access Management (IDAM) capability. This is mandatory and must be evidenced within the Provider's policies and relevant documents.
- d. Have monitoring and alerting process and capability. This is mandatory and must be evidenced within the Provider's policies and relevant documents.
- e. Have a business continuity and disaster recovery process. This is mandatory and must be evidenced within the Provider's policies and relevant documents.
- f. Subscribe to Cyber Essentials Plus and/or ISO27001 or equivalent. This is mandatory and must be evidenced by the Provider.
- g. Have an escalation process for resolution of any VMS system issues.
- h. Provide on demand documentation to prove: privacy notice (used by the Provider when collecting details from Candidates); proof of penetration testing and resolution of findings, system health checks, architectural artefacts and/or platform-based compliance reporting.

39. The Contracting Authority will verify the evidence requested above at paragraph 38 following Contract award, and the Provider must pass the Contracting Authority's information and risk assurance process. The Provider must put forward a technical lead to liaise and engage with Contracting Authority representatives as part of this process. Where a third-party VMS is proposed, a representative from both the third party and the Provider will be required.

40. Personal Data utilised under the Contract must be kept within the United Kingdom. The Contracting Authority would also accept such data being held within the European Union, subject to the Provider notifying the Contracting Authority of the location within the European Union such data will be held prior to transferring any such data to the European Union. The Contracting Authority will only accept data being held in a Restricted Country in limited circumstances (and, in any case, will require the agreement of the Parties in accordance with Clause 27.3 of the Call-Off Terms and Conditions).

41. A key priority within the Contracting Authority is using data to support evidenced based decision making. Having an accurate view of our Temporary Worker population and being able to report this to senior officials is critical to the Contracting Authority successfully realising its strategic ambitions and to ensure it is delivering on its workforce strategy.

42. The Contracting Authority will require access to data on an automated or semi-automated basis, for processing and analysis using its own infrastructure. This data needs to be made available in a

standard data format, preferably via API. Linked to the Contracting Authority's ambitions on Diversity and Inclusion, the Contracting Authority would also like to be able to report on the composition of the Temporary Worker pool.

43. To use this data to full effect, it should be aligned to the Civil Service HR Data Standard (available on [gov.uk](https://gov.uk)), and each Temporary Worker should be uniquely identifiable via a Contracting Authority staff number in the VMS.
44. The Provider will supply:
  - a. On a monthly basis (made available in real time via the VMS): an easily accessible digital Management Information suite of reports (reporting functionality) in a format accessible that combines the multiple data streams below to give a comprehensive overview of required data.
  - b. On a six-monthly basis (made available in real time via the VMS), the Supply Chain Transparency Report, in accordance with Appendix 9 (Management Information and Records).
  - c. Meet the following minimum requirements of reports to show/track:
    - i. Spend, either real-time or for specified historical periods, broken down to all levels i.e., Team, job type, assignment purpose, individual worker, etc.
    - ii. Full assignment details i.e. team, hiring manager, job title, OPWR status; pay and charge rates, purpose, start & end/anticipated end dates and length of tenure.
    - iii. Fulfillment - active requirements and the percentage of requirements filled (directly/via supply chain/unfulfilled).
    - iv. Invoice summary - individual, monthly, quarterly, and yearly.
    - v. Usage of workers on defined dates or time periods; headcount, hours, costs, job roles.
45. In addition, the Provider will:
  - a. Assist the Contracting Authority to comply with Freedom of Information Act Requests, Subject Access Requests, Parliamentary Questions and other such data transparency requests in accordance with Clauses 28 and 30.6.5 of the Call-Off Terms and Conditions. The Provider will be expected to support the Contracting Authority with such requests for up to seven years after the end of the Term.
  - b. In accordance with Clause 27 of the Call-Off Terms and Conditions, provide to the Contracting Authority documentation demonstrating full compliance with the applicable UK GDPR/Data Protection rules in its role as Data Processor.
  - d. Deliver an efficient and effective mechanism for ad-hoc requests for information from the Contracting Authority. The Provider shall respond to any query or issue raised by Contracting Authority staff (or staff of any Crown or public body accessing the Services pursuant to Paragraph 6 of Appendix 5 (Specification of Requirements)) within two Working Days. The response must not be an automated email and must acknowledge the matter being raised.
  - e. Will monitor trends in the labour market and report quarterly on any potential impact on the service to the Contracting Authority. Data to be requested in accordance with campaigns tailored to the following:
    - i. Skills shortage in the UK.
    - ii. Unemployment rates in the UK.
    - iii. Salary comparison analysis for certain campaigns.
  - f. Provide a single point of contact for the co-ordination of data and security issues and breaches.

## **(F) Pricing & Invoicing**

46. The Provider must account for all reasonable and foreseeable costs associated with the provision of the services within their tender, as set out in the Invitation to Tender for a Further Competition and the Pricing Schedule Template. The only costs to be discussed and agreed between the Contracting Authority and Provider during the Term shall be:
  - 46.1. the use of any Additional Services (set out in the YPO specification, Annex B of this Specification of Requirements and the Pricing Schedule Template), which can be accessed by the Authority at its own discretion and subject to Paragraph 2 of Annex 1 to Part A of Appendix 2 (Prices for Services) and the Variation Procedure; and

- 46.2. adjustments to the Fees which shall be considered by the Contracting Authority in accordance with the provisions of paragraph 4 of Part A to Appendix 2 of the Contract (Prices for Services).
47. The Contracting Authority shall pay invoices on a monthly basis in arrears within 30 calendar days of a valid undisputed invoice submitted in accordance with paragraph 48 below and Paragraph 5 of Part A of Appendix 2 (Prices for Services) and will endeavour to pay undisputed invoices within 5 Working Days. The Provider must pay all entities/parties within their supply chain within 30 calendar days of a valid undisputed invoice, including all Temporary Workers and Sub-Contractors.
48. Invoices must be sent to the Contracting Authority within 14 days of the end of each Month. This must include, as a separate attachment, evidence of any completed work that is being invoiced with a breakdown of the costs that is equal to the invoice value.
- a) Invoices must be produced directly by the VMS to avoid any invoicing errors and must be submitted through the VMS and via encrypted email to: [This has been redacted]
  - b) The Contracting Authority will raise one purchase order for the Contract, which must be quoted on the invoice. The invoice must also quote the invoice number and title relating to the Month the Contracting Authority is being invoiced for (e.g., December 2022 invoice).
  - c) The breakdown must be in an Excel Spreadsheet. It must contain:
    - I. The full name of the Temporary Worker.
    - II. The VAT category, to be provided by the Contracting Authority when the requisition is raised on the VMS.
    - III. The cost centre code, programme code and project code (where relevant), to be provided by the Contracting Authority when the requisition is raised on the VMS.
    - IV. A breakdown of the Fees being billed, including Fees paid to the Temporary Worker and Fees being paid to the Provider and/or third party (e.g. Sub-Contractor).
    - V. Each Temporary Worker's day rate or Statement of Work Placement fee schedule.
    - VI. The name of the Contracting Authority Civil Servant who signed off the timesheet/expenses claim/Statement of Work Placement milestone payment claim submission, including their email address.
    - VII. The Provider must comply with any requests made by the Contracting Authority to alter the invoice process or amend the presentation and format of the invoice breakdown spreadsheet to ensure alignment with the Contracting Authority's internal processes, controls and governance.
49. When requested by the Contracting Authority, the Provider must provide the necessary information to ensure the Contracting Authority complies with its financial auditing requirements. This includes but is not limited to, Temporary Workers' contracts (with the Provider or a Sub-Contractor), evidence showing the approved timesheet/expenses claim/Statement of Work Placement milestone payment claim, and the Provider's financial accounts.
50. When the Contracting Authority requests specific data from the Provider, it is preferable for the Provider to share the required information with the Contracting Authority via the VMS. If this is not suitable or possible, the Provider must provide an alternative method of sharing documents that is both secure and easy to use.

## **(G) Compliance**

51. The Provider must comply with all applicable legislation in relation to the provision of these services.
52. Each entity within the supply chain is responsible for paying any applicable taxes within the local jurisdiction. With respect to HMRC's off-payroll working rules (OPWR), the Contracting Authority will meet its legal obligations, which includes issuing a status determination for each Temporary

Worker. The Contracting Authority will issue such determinations and it will be the responsibility of the Provider, and any relevant entity within the supply chain, to deduct any taxes, statutory contributions, or any other applicable charges to the Temporary Worker's pay.

53. The Provider must comply with all reasonable information requests to support the Contracting Authority to meet any of its obligations as a public body. This includes any changes to legislative or reporting obligations (or any other legal requirements) during the Term.
54. Temporary Workers contracted via the Contract must comply with the Civil Service Code of Conduct. The Contracting Authority will notify the Provider of any infractions against the Code by any Temporary Workers. In accordance with Clause 13.2.8 of the Call-Terms and Conditions, the Contracting Authority reserves the right to take any appropriate actions in such circumstances, including but not limited to immediate dismissal.

## **(H) Equality, Diversity & Inclusion**

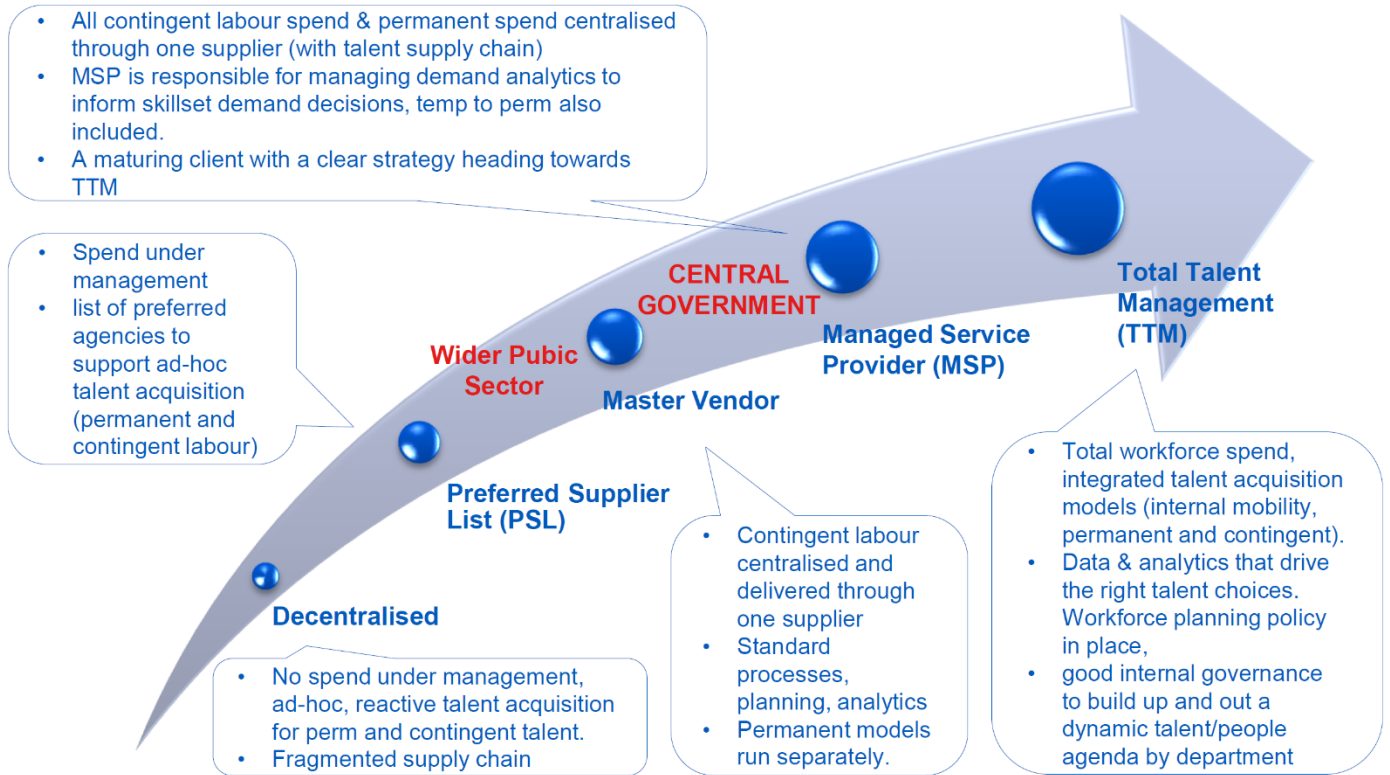
55. A representative workforce helps the Contracting Authority deliver its trade and investment outcomes by greater cognitive and intellectual diversity, understanding of its customers and providers, and appreciation for a wider range of user needs. Recruitment and Career Development is a strand within the Contracting Authority's Inclusion Framework, which is housed within the People Strategy. The Provider will need to work with the Contracting Authority to both monitor and develop its approaches to having a Temporary Worker workforce that better represents the communities the Contracting Authority serves within the U.K.
56. The Provider shall:
  - a. Ensure that Candidates are given access to assignments in a fair and non-discriminatory manner.
  - b. Support hiring managers with advice on how to ensure job descriptions are inclusive and will attract a diverse candidate pool.
  - c. Use D&I data to test the impact of the processes operating within the Contracting Authority, including on the Contracting Authority's ability to attract and bring in diverse Temporary Workers followed by demonstration of continuous improvement to these processes which should result in recommendations for the Contracting Authority to update its operating processes. The Provider and the Contracting Authority shall review the impact of the processes operating within the Contracting Authority and consider any improvements that could be implemented to support diversity within the Contracting Authority's worker population during the quarterly Performance Review Meetings.
  - d. Be committed to equality of opportunity for all – delivering auditable evidence of this equality related to quarterly data reports.
  - e. Aim to provide 10% of the total number of CVs submitted to the Contracting Authority under the Contract from groups under-represented in the workforce – e.g. ethnicity and disability (the "Diversity Target"). This does not constitute a formal KPI, however the Provider will work with the Contracting Authority to support the achievement of the Contracting Authority's Diversity Target, with the intention of increasing diversity in the Contracting Authority's worker population. The Parties will review progress against the Diversity Target during the quarterly Performance Review Meetings and discuss any operational improvements that could be implemented to improve performance against the Diversity Target in accordance with paragraph 56(c) above.
  - f. Provide quarterly data reports (structure to be agreed as part of mobilisation and implementation) on the diversity of the Temporary Worker workforce within the Contracting Authority, drawing out key insights and trends alongside actions to improve.
  - g. Demonstrate auditable compliance with equality legislation, and the Provider shall promote equality and diversity in all their dealings.
  - h. Ensure that HMG's Levelling Up strategy is used as an opportunity to hire individuals from outside of London and across the cities and nations of the UK, meeting a wider Governmental aspiration to 'level up' local economies across the UK.

## (I) Social Value

57. In compliance with HMG policy, the Contracting Authority will be evaluating social value as part of its award criteria for this Contract and has allocated a 10% weighting to its social value award criteria. The Provider's social value commitments will also be monitored by the Contracting Authority under the Contract. Further details on HMG's policy can be found via the following link: <https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts>.
58. The following social value themes detailed in HMG's policy have been selected:
- a. Tackling Economic Inequality (Theme 2; MAC2.2): Create employment and training opportunities (including apprenticeships) particularly for those who face barriers to employment and/or who are located in deprived areas, and for people in industries with known skills shortages or in high growth sectors.
  - b. Equal Opportunity (Theme 4; MAC5.1): Demonstrate action to increase the representation of disabled people in the Provider's account/contract management workforce.
  - c. Equal Opportunity (Theme 4; MAC6.2): Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the Contract.
59. The Contracting Authority views social value as constituting an important element of the Contract. It offers an opportunity for both Parties to achieve a broader positive impact beyond the operation of this Contract and work together to achieve tangible outcomes for the benefit of British society.
60. The reporting metrics associated with the social value elements outlined in paragraph 58 are noted in the Contracting Authority's KPIs. These will be distinct from KPIs 1-9, featuring different reporting thresholds (as further described in Paragraph 1.4 of Annex 1 to Part B of Appendix 8 (Performance Management)) and progress will be reported on a quarterly basis by the Provider (every Service Period). The quarterly Social Value Report will include the following:
- a. Progress to-date against each social value commitment/KPI (summary of activities completed or developments since last reporting period);
  - b. An indication as to whether the social value commitment/KPI will be achieved within the outlined timeframe; and
  - c. Where the social value KPI is rated as 'Requires Improvement' or 'Inadequate', the actions that will be taken by the Provider to improve progress against the relevant social value commitment/KPI.
61. Following contract award, the Parties will use the social value award criteria and reporting metrics set out in the procurement documentation and in the Provider's tender to establish social value key performance indicators (SV KPIs). Such SV KPIs will comprise a combination of a deliverable and a numeric element, by which performance of that deliverable is to be measured. As part of the social value award criteria, the Contracting Authority will evaluate the qualitative (not quantitative) aspects of a tenderer's responses to the social value questions, including any relevant commitments.
62. As per the Contracting Authority's reporting obligations, one SV KPI, alongside three of the core KPIs, will also be reported to the Cabinet Office and published on a quarterly basis. The reporting threshold used for these transparency KPIs are set out in paragraph 1.4 in Annex 1 to Part B of Appendix 8 (Performance Management).



## Annex A: Service Models Overview



## Annex B: Optional Additional Services

The Contracting Authority will have access to the Additional Services (as defined in Clause 1 (Interpretation) of the Call-Off Terms and Conditions and outlined within Appendix 3 of the Call-Off Terms and Conditions) outlined under the YPO framework and will request services as and when required. The specific Additional Services requirements, alongside the associated costs, will be discussed and agreed with the Provider in accordance with the Variation Procedure.

Current contextual points driving resourcing challenges:

- The Contracting Authority is now moving from a 'growth phase' to one more focussed on sustaining and changing its workforce to reflect its priorities as it acts as an independent trading nation within the global community.
- Covid-19 is (and is likely to continue) to impact the number of applications the Contracting Authority receives, in conjunction with the Civil Service's external by default recruitment policy. This means the Contracting Authority may need to shift how it supports hiring managers to manage increased volumes of applications.
- Continued demand for talent in areas where the Contracting Authority have critical skills gaps i.e. trade negotiations, trade policy, DDaT and Analysis. This is important as the recycling of resource is unlikely to meet demand.
- Recruitment is a key strand of the Contracting Authority's Diversity & Inclusion Strategy to achieve its ambitions as an inclusive employer.
- At an executive-level, increasing the diversity of the Contracting Authority's Senior Civil Service (SCS) workforce is a key priority. With a particular focus upon increasing the number of females, BAME and disabled candidates.
- In addition to increasing the number of diverse candidates attracted to the Contracting Authority's SCS roles, the Contracting Authority also aim to increase the flow through campaigns. As such, the Contracting Authority needs to examine and improve its selection methodology to remove the potential of human bias.
- The Contracting Authority anticipates continued demand for private sector commercial acumen, given the Contracting Authority's trade promotion work. Attracting this capability is a challenge, particularly at an SCS level given the pay constraints of the Civil Service, and so increasing the attractiveness of the Contracting Authority's roles and articulating its wider benefits is a key priority.

The Provider may provide (though the solutions may be different between delegated grades and SCS level):

- A flexible 'menu' of options for permanent recruitment that goes beyond only being able to source the 'traditional' full campaign management. A flexible model which allows the Contracting Authority to pick and choose support which could include candidate attraction; candidate management (particularly for high volume campaigns); and assessments. Key points to note (but not exhaustive):
  - a. Targeted attraction for specific skills and identified difficult to fill roles.
  - b. Targeted attraction to support with D&I agenda.
  - c. Pre-sift to shortlist quality CVs against relevant skills.
  - d. Potential support to sift bulk campaigns advertised via Civil Service Jobs against stated criteria.
  - e. Monthly data on recruitment market, including D&I to ensure our campaigns can benefit from attraction knowledge based on the Provider's talent pool.
- The above will need to be compliant with Civil Service Commission Recruitment principles and utilise Civil Service Success Profiles as the recruitment method (both documents located on gov.uk).
- The Contracting Authority requires the above service requirements approached through a D&I lens. The Contracting Authority requires innovative attraction and selection techniques that remove the element of human bias. Technology may play a big part in this.
- The Contracting Authority believes some of its biggest permanent recruitment challenges e.g., large numbers of applicants, would be best tackled through the implementation of technology solutions.

The following services are currently envisaged as possible:

<b>HR Additional Service Category</b>	<b>HR Additional Service</b>	<b>Description</b>
<b>Recruitment</b>	Talent market analytics	Provide talent market analysis to support HMG's Levelling Up agenda (e.g., labour market analysis of locations such as Cardiff, Belfast, Edinburgh, and Darlington). Up to 200 working hours (25 Working Days) of analytical support.
	Recruitment Process Support/Permanent recruitment	Where the Contracting Authority requires support with attraction, processing, selecting, and onboarding candidates within permanent recruitment processes. In some instances this may include managing a bulk campaign, end to end on behalf of the Contracting Authority. Up to 800 roles per annum.
	Interview management/Assessment centres	Where the Contracting Authority requires support to resource the administration of interviews (up to 800 campaigns) and/or assessment centres (up to 10 campaigns).
<b>Talent Management</b>	Talent pool management and systems	Managed talent pool of 50 suitable candidates aligned to the Contracting Authority's typical demand for expertise (e.g., Digital, Project Delivery, Trade or Sector specialists).
<b>Outcome focused solutions</b>	Strategic Workforce Planning	Advisory support to aid achievement of the Contracting Authority's short and long-term strategic workforce objectives. Up to 200 working hours (25 Working Days) of advisory support.

**Annex C: The Contracting Authority's Temporary Worker population (as of 17 May 2021)**

[This has been redacted]

**Annex D: Current Temporary Worker Request Process Flow**

[This has been redacted]

**Annex E: Historical Temporary Worker Demand**

**Annex F: The Contracting Authority's Interim Travel and Expenses Policy** - this policy will only be applicable to Temporary Workers assessed by the Contracting Authority to be Inside OPWR (IR35).

**Appendix 6:****IMPLEMENTATION PLAN DETAILS****1 Definitions**

1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

<b>“Achieve”</b>	means, in respect of a Milestone, the determination of an authorised representative of the Contracting Authority that the Provider has successfully accomplished a Milestone,  and <b>“Achieved”</b> and <b>“Achievement”</b> shall be construed accordingly;
<b>“Contracting Authority’s Contract Manager”</b>	means the person appointed by the Contracting Authority to manage the Contract as named in the Order Form and any subsequent replacement;
<b>“Detailed Implementation Plan”</b>	means the plan developed and revised from time to time in accordance with Paragraphs 4 and 5 of this Appendix;
<b>“Implementation Plan”</b>	means the Outline Implementation Plan, or (if and when approved by the Contracting Authority pursuant to Paragraph 4 of this Appendix) the Detailed Implementation Plan as updated in accordance with Paragraph 5 of this Appendix from time to time;
<b>“Incumbent”</b>	means the person, firm, company or organisation appointed by the Contracting Authority to provide all or part of the Services prior to the Commencement Date (where this person, firm, company or organisation is not the Provider). For the avoidance of doubt, this includes any employee, agent, servant or representative of the Incumbent or person employed by on or on behalf of the Incumbent to provide all or part of the Services prior to the Commencement Date;
<b>“Milestone”</b>	means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
<b>“Milestone Achievement Certificate”</b>	means the certificate to be granted by the Contracting Authority when the Provider has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 2 to this Appendix;

<b>“Milestone Date”</b>	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>“Outline Implementation Plan”</b>	means the outline plan set out at Annex 1 of this Appendix;
<b>“Transition”</b>	means the mobilisation and implementation activities outlined in Section 2 (A) of Appendix 5 (Specification of Requirements); and
<b>“Transition Period”</b>	means a period of 12 weeks from the Commencement Date.

## **2 Introduction**

### **2.1 This Appendix:**

- 2.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and the Detailed Implementation Plan; and
- 2.1.2 defines the process for the issue of a Milestone Achievement Certificate by the Contracting Authority upon the Achievement of a Milestone by the Provider.

## **3 Outline Implementation Plan**

- 3.1 The Outline Implementation Plan is set out in Annex 1 of this Appendix.
- 3.2 The Contracting Authority reserves the right to disclose the Outline Implementation Plan to the Incumbent at any time prior to the approval of the Detailed Implementation Plan by the Contracting Authority.
- 3.3 The Provider shall:
  - 3.3.1 cooperate with the Contracting Authority and the Incumbent (in the manner determined by the Contracting Authority) during the Transition Period in order to assess the suitability of the Outline Implementation Plan; and
  - 3.3.2 within a reasonable time comply with any reasonable requests made by the Contracting Authority in respect of this Paragraph 3.3.
- 3.4 All changes to the Outline Implementation Plan shall be subject to the Variation Procedure.

## **4 Approval of the Detailed Implementation Plan**

- 4.1 The Provider shall submit a draft of the Detailed Implementation Plan to the Contracting Authority for approval no later than 10 Working Days after the Commencement Date.

- 4.2 The Provider shall ensure that the draft Detailed Implementation Plan includes all of the information listed at Paragraph 19 of Appendix 5 (Specification of Requirements) and any other information that the Contracting Authority may request (in accordance with Paragraph 4.3 of this Appendix).
- 4.3 Prior to the submission of the draft Detailed Implementation Plan to the Contracting Authority in accordance with Paragraph 4.1 of this Appendix, the Contracting Authority shall have the right:
- (a) to review any documentation produced by the Provider in relation to the development of the Detailed Implementation Plan, including:
    - (i) details of the Provider's intended approach to the Detailed Implementation Plan and its development;
    - (ii) copies of any drafts of the Detailed Implementation Plan produced by the Provider; and
    - (iii) any other work in progress in relation to the Detailed Implementation Plan; and
  - (b) to require the Provider to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 4.4 Following receipt of the draft Detailed Implementation Plan from the Provider, the Contracting Authority shall:
- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
  - (b) notify the Provider in writing that it approves or rejects the draft Detailed Implementation Plan no later than 10 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Contracting Authority.
- 4.5 Following receipt of the draft Detailed Implementation Plan from the Provider, the Contracting Authority reserves the right to disclose the draft Detailed Implementation Plan to the Incumbent at any time during the Transition Period.
- 4.6 The Provider shall:
- 4.6.1 cooperate with the Contracting Authority and the Incumbent (in the manner determined by the Contracting Authority) during the Transition Period in order to assess the suitability of the draft Detailed Implementation Plan; and
  - 4.6.2 within a reasonable time comply with any reasonable requests made by the Contracting Authority in respect of this Paragraph 4.6.
- 4.7 If the Contracting Authority rejects the draft Detailed Implementation Plan:
- (a) the Contracting Authority shall inform the Provider in writing of its reasons for its rejection; and
  - (b) the Provider shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Contracting Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Contracting Authority for the Contracting Authority's approval within 5

Working Days of the date of the Contracting Authority's notice of rejection. The provisions of Paragraph 4.4 and this Paragraph 4.7 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution in accordance with the Dispute Resolution Procedure at any time.

- 4.8 If the Contracting Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Contracting Authority's notice of approval.
- 4.9 The Contracting Authority reserves the right to disclose the approved Detailed Implementation Plan to the Incumbent at any time.

## **5 Updates to and maintenance of the Detailed Implementation Plan**

- 5.1 Following the approval of the Detailed Implementation Plan by the Contracting Authority:
  - (a) the Contracting Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Provider and the Provider shall submit a draft revised Detailed Implementation Plan to the Contracting Authority within 10 Working Days of receiving such a request from the Contracting Authority (or such longer period as the Contracting Authority and the Provider may agree provided that any failure to agree such longer period shall be referred for resolution in accordance with the Dispute Resolution Procedure);
  - (b) any revised Detailed Implementation Plan shall (subject to Paragraph 5.2 of this Appendix) be submitted by the Provider for approval in accordance with the procedure set out in Paragraph 4 of this Appendix; and
  - (c) the Provider's performance against the Implementation Plan shall be monitored at the weekly meetings which will be held between the Provider, Contracting Authority and the Incumbent pursuant to Paragraph 22 of Appendix 5 (Specification of Requirements). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Provider to the Contracting Authority not less than 3 Working Days in advance of each meeting.
- 5.2 Save for any amendments which are of a type identified and notified by the Contracting Authority (at the Contracting Authority's discretion) to the Provider in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Variation Procedure provided that any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments.
- 5.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Contracting Authority.

## **6 The Achievement of the Milestones and the issuing of Milestone Achievement Certificates**

- 6.1 Where the Provider believes that it has accomplished a Milestone, the Provider shall either:



- 6.1.1 notify the Contracting Authority by sending an email to the Contracting Authority's Contract Manager within 3 Working Days from the date on which the Provider believes that the Milestone has been accomplished; or
  - 6.1.2 in the event that the next weekly meeting to be held between the Provider, Contracting Authority and the Incumbent (in accordance with Paragraph 5.1(c) of this Appendix) is to be held within 3 Working Days of the date on which the Provider believes that the Milestone has been accomplished, notify the Contracting Authority during the weekly meeting.
- 6.2 Upon the Achievement of a Milestone by the Provider, the Contracting Authority shall within a reasonable time issue an electronic copy of the relevant Milestone Achievement Certificate to the email address of the Provider's Contract Manager. Each Milestone Achievement Certificate shall be in substantially the same form as that set out in Annex 2 to this Appendix.

## **ANNEX 1: OUTLINE IMPLEMENTATION PLAN**

[This has been redacted]

## ANNEX 2: MILESTONE ACHIEVEMENT CERTIFICATE

To: Hays Specialist Recruitment Limited

From: The Secretary of State for the Department for International Trade

[Date]

Dear Sirs,

### MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

We refer to the contract (the “**Contract**”) relating to the provision of the Services between the Secretary of State for the Department for International Trade (the “**Contracting Authority**”) and Hays Specialist Recruitment Limited (the “**Provider**”) dated [date] (Contract reference: [insert Contract reference]).

Capitalised terms used in this certificate have the meanings given to them in Clause 1 of the Contract and Paragraph 1 of Appendix 6 (*Implementation Plan Details*) of the Contract.

This Milestone Achievement Certificate is issued pursuant to the terms of Appendix 6 (*Implementation Plan Details*) of the Contract.

Yours faithfully

[Name]

[Position]

acting on behalf of The Secretary of State for the Department for International Trade

## **Appendix 7:**

### **QUALITY STANDARDS**

#### **1 Definitions**

- 1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

<b>“Contracting Authority System”</b>	means the Contracting Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Contracting Authority or the Provider in connection with the Contract which is owned by the Contracting Authority or licensed to it by a third party and which interfaces with the Provider System or which is necessary for the Contracting Authority to receive the Services;
<b>“IT Environment”</b>	means the Contracting Authority System and the Provider System;
<b>“Provider Software”</b>	means software which is proprietary to the Provider (or an affiliate of the Provider) and which is or will be used by the Provider for the purposes of providing the Services;
<b>“Provider System”</b>	means the information and communications technology system used by the Provider in implementing and performing the Services including the Software, equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Contracting Authority System);
<b>“Software”</b>	means Specially Written Software, Provider Software and Third Party Software;
<b>“Specially Written Software”</b>	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Provider (or by a Sub-contractor or other third party on behalf of the Provider) specifically for the purposes of the Contract, including any modifications or enhancements to Provider Software or Third Party Software created specifically for the purposes of the Contract;
<b>“Standards”</b>	means the standards, policies and/or procedures identified in this Appendix;
<b>“Standards Hub”</b>	means the Government's open and transparent standards adoption process as documented at <a href="http://standards.data.gov.uk/">http://standards.data.gov.uk/</a> ;

- “Third Party Software”** means software which is proprietary to any third party (other than an affiliate of the Provider) or any open source software which in any case is, will be or is proposed to be used by the Provider for the purposes of providing the Services; and
- “Suggested Challenge”** means a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

## **2 General**

- 2.1 Throughout the term of the Contract, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Provider’s provision, or the Contracting Authority’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Variation Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by the Contracting Authority, the Provider shall be responsible for ensuring that the potential impact on the Provider’s provision, or the Contracting Authority’s receipt, of the Services is explained to the Contracting Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Provider. Any such alteration to any Standard(s) shall require the prior written agreement of the Contracting Authority and shall be implemented within an agreed timescale.

## **3 Technology and Digital Services Practice**

- 3.1 The Provider shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

## **4 Open Data Standards & Standards Hub**

- 4.1 The Provider shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of Paragraph 2.2 of this Appendix, the Provider shall, when implementing or updating a technical component or part of the Software or the Provider’s solution in respect of the Services where there is a requirement under the Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government’s Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Provider shall detail, subject to the security and confidentiality provisions in the Contract, an illustration of such requirement or opportunity within the IT Environment, the Provider’s solution in respect of the Services and Government’s IT infrastructure and the suggested open standard.

- 4.3 The Provider shall ensure that all documentation published on behalf of the Contracting Authority pursuant to the Contract is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Contracting Authority otherwise agrees in writing.

## **5 Technology Architecture Standards**

- 5.1 The Provider shall produce full and detailed technical architecture documentation for the Provider's solution in respect of the Services in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

## **6 Accessible Digital Standards**

- 6.1 The Provider shall comply with (or with equivalents to):
- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
  - (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

## **7 Service Management Software & Standards**

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Provider shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- (a) ITIL v4;
  - (b) ISO/IEC 20000-1 2018 "Information technology — Service management — Part 1";
  - (c) ISO/IEC 20000-2 2019 "Information technology — Service management — Part 2";
  - (d) ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
  - (e) ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.
- 7.2 For the purposes of management of the Services and delivery performance the Provider shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

**Appendix 8:****PERFORMANCE MANAGEMENT****1. Definitions**

1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

**“Contracting Authority 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 are:

(i) supplied to the Provider by or on behalf of the Contracting Authority; and/or

(ii) which the Provider is required to generate, process, store or transmit pursuant to this Contract; and/or

b) any Personal Data for which the Contracting Authority is the Data Controller;

**“CA Rebates”**

means any CA Rebates specified in Annex 1 to Part B of this Appendix as being payable by the Provider to the Contracting Authority in respect of any failure by the Provider to meet one or more KPIs (excluding the SV KPIs);

**“CA Rebate Cap”**

means, for each Service Period, 50% of the total amount of the Management Fee and the Pre-Identified (Nominated) Worker Fee payable by the Contracting Authority in the first invoice issued for the Month following the Performance Review Meeting;

**“Contracting Authority’s Contract Manager”**

means the person appointed by the Contracting Authority to manage the Contract as named in the Order Form and any subsequent replacement;

**“Contract Year”**

means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;

**“Critical Performance Failure”**

means:

(i) the Provider achieving three or more Red Ratings (as per the table set out in Paragraph 1.1 of Annex 1 to Part B of this Appendix) within a Contract Year; and/or

(ii) the Provider achieving five or more Amber Ratings (as per the table set out in Paragraph 1.1 of Annex 1 to Part B of this Appendix) within a Contract Year;

**“KPIs”** means the key performance indicators set out in Annex 1 to Part B of this Appendix;

**“KPI Failure”** means the Provider failing to achieve the Target Performance Level in respect of a KPI (excluding the SV KPIs);

**“Loss”** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise;

**“Performance Monitoring Report”** has the meaning given in Paragraph 1.1 of Part C (Performance Monitoring) of this Appendix;

**“Performance Review Meetings”** has the meaning given in Paragraph 1.3 of Part C (Performance Monitoring) of this Appendix;

**“Quarter”** means three (3) calendar Months;

**“Satisfaction Surveys”** has the meaning given in Paragraph 2 of Part C (Performance Monitoring) of this Appendix;

**“Service Period”** means a Quarter, save that:

b) the first service period shall begin on the Commencement Date and shall expire at the end of the Quarter in which the Commencement Date falls; and

c) the final service period shall commence on the first day of the Quarter in which the Term expires or terminates and shall end on the expiry or termination of the Term;

**“Social Value Report”** means the quarterly social value report containing the information set out in Paragraph 60 of Appendix 5 (Specification of Requirements);



<b>“SV KPIs”</b>	means the social value KPIs set out in Paragraph 1.2 of Annex 1 to Part B of this Appendix;
<b>“SV KPI Target”</b>	means the target level of performance for a SV KPI which is required by the Contracting Authority, as set out against the relevant SV KPI in the SV KPI Target column in the table in Paragraph 1.2 of Annex 1 to Part B of this Appendix; and
<b>“Target Performance Level”</b>	means the minimum level of performance for a KPI (excluding the SV KPIs) which is required by the Contracting Authority, as set out against the relevant KPI in the Green Rating column in the table in Paragraph 1.1 of Annex 1 to Part B of this Appendix.

## Part A: Performance Failures

### 1. Performance Failures

- 1.2 The Provider shall at all times provide the Services to meet or exceed:
  - 1.2.1 the Target Performance Level for each KPI (excluding the SV KPIs); and
  - 1.2.2 the SV KPI Target for each SV KPI.
- 1.3 The Provider acknowledges that any KPI Failure shall entitle the Contracting Authority to the rights set out in Part B of this Appendix including the right to any CA Rebate and that any CA Rebate is a price adjustment and not an estimate of the Loss that may be suffered by the Contracting Authority as a result of the Provider's failure to meet any Target Performance Level in respect of a KPI (excluding the SV KPIs).
- 1.4 The Provider shall send Performance Monitoring Reports to the Contracting Authority detailing the level of service which was achieved in accordance with the provisions of Part C (Performance Monitoring) of this Appendix.
- 1.5 A CA Rebate shall be the Contracting Authority's exclusive financial remedy for a KPI Failure except where:
  - 1.5.1 the KPI Failure:
    - (a) has arisen due to a Prohibited Act or wilful Default by the Provider;
    - (b) results in the corruption or loss of any Contracting Authority Data; and/or
    - (c) results in the Contracting Authority being required to make a compensation payment to one or more third parties; and/or
  - 1.5.2 the Contracting Authority is otherwise entitled to or does terminate this Contract pursuant to:
    - (a) Clause 10.4 (Conflicts of Interest);
    - (b) Clause 11.3 (Prevention of Fraud);
    - (c) Clause 17.4 (Provider's Staff);
    - (d) Clause 22.9 (Prevention of Bribery and Corruption);
    - (e) Clause 29.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989);
    - (f) Clause 30.10 (Confidential Information);
    - (g) Clause 32.4 (Security);
    - (h) Clauses 33.10 and 33.11 (Intellectual Property Rights);
    - (i) Clause 39.4 (Remedies in the event of inadequate performance of the Services);
    - (j) Clauses 47.1 and 47.2 (Insolvency);
    - (k) Clause 47.3 (Change of Control);
    - (l) Clauses 47.4, 47.7 and 47.9 (Material Default); or
    - (m) Clause 51.4 (Disruption).
- 1.6 The Contracting Authority may, at any time during the Term, request changes to the KPIs (including changes to the Target Performance Levels and the SV KPI Targets)

in accordance with the Variation Procedure. Any such changes shall not be valid until the Parties have signed the Variation Form and appended it to the Order Form.

## **Part B: KPIs and CA Rebates**

### **1. KPI Failure**

- 1.7 On the occurrence of a KPI Failure, the Contracting Authority, in its absolute discretion and without limiting any other of its rights, may:
- (a) require the Provider to take all remedial action that is reasonable to prevent a KPI Failure from recurring;
  - (b) issue an Improvement Notice instructing the Provider to improve and take remedial action to prevent a KPI Failure from recurring; and/or
  - (c) deduct the applicable CA Rebate payable by the Provider to the Contracting Authority.

### **2. Critical Performance Failure**

- 2.1 If the level of performance of the Provider is likely to cause or causes a Critical Performance Failure to occur, the Provider shall immediately notify the Contracting Authority in writing and the Contracting Authority, in its absolute discretion and without limiting any other of its rights, may:
- (a) require the Provider to immediately take all remedial action that is reasonable to mitigate the impact on the Contracting Authority and to rectify or prevent a Critical Performance Failure from taking place or recurring;
  - (b) issue an Improvement Notice instructing the Provider to improve and take remedial action to rectify or prevent a Critical Performance Failure from taking place or recurring; and/or
  - (c) take any of the actions set out in Clause 39.2 of the Contract (Remedies in the Event of Inadequate Performance of the Services), including terminate the Contract in accordance with Clause 39.2.3 of the Contract.

### **3. CA Rebates**

- 3.1 The Contracting Authority shall use the Performance Monitoring Reports supplied by the Provider to verify the calculation and accuracy of the CA Rebates, if any, applicable in respect of each Service Period.
- 3.2 CA Rebates are a reduction of the amounts payable in respect of the Services and do not include VAT. The Provider shall set-off the value of any CA Rebates against the appropriate invoice in accordance with Paragraph 2 of Annex 1 to Part B of this Appendix.

**Annex 1 to Part B: KPIs and CA Rebates****1. Key Performance Indicators**

1.1 The KPIs (excluding the SV KPIs) that shall apply to the Services are set out below:

Key Performance Indicator	Description	Exemption(s)	Red Rating	Amber Rating	Green Rating (the “Target Performance Level”)
1. Security	The Provider must ensure the following is completed in respect of each new Temporary Worker prior to the Contracting Authority's specified start date: <ul style="list-style-type: none"> <li>that the necessary security checks/clearances have been completed and documented in accordance with Clause 13.1.11 of the Contract and Paragraphs 34(b)(iv)&amp;(v) of Appendix 5 (Specification of Requirements);</li> <li>they have been onboarded onto the Vendor Management System (VMS); and</li> <li>they have a signed contract in place.</li> </ul>	There must be written consent from the Head of People and Professional Services (Commercial Grade 7) that a Temporary Worker is able to commence work at the Contracting Authority without a signed contract. Where the Contracting Authority or a third party is responsible for any delays in relation to the processing of CTC, SC or DV security clearances (if relevant) pursuant to Paragraph 25(a)(v) of Appendix 5 (Specification of Requirements). Any other exemptions are at the Contracting Authority's sole discretion.	<100%	N/A	100%
2. Security	The Provider must ensure that each Temporary Worker returns all Contracting Authority issued equipment (e.g., laptop and security passes) within 5 Working Days of the expiry or termination of their contract/engagement, or 15 Working Days where Covid-19 restrictions are in place and remote collection is required.	Delays in returning equipment due to third party courier service, when remote collection is in operation. Exemptions are at the sole discretion of the Contracting Authority.	5+ Temporary Workers do not return Contracting Authority issued equipment within the stated timeframes, per Service Period (quarterly).	1-4 Temporary Workers do not return Contracting Authority issued equipment within the stated timeframes, per Service Period (quarterly).	Every Temporary Worker returns Contracting Authority issued equipment within the stated timeframes, per Service Period (quarterly).
3. Customer Service	When contacted with a query or issue, the Provider must respond to Contracting Authority staff (or staff of any Crown or public body accessing the Services pursuant to Paragraph 6 of Appendix 5 (Specification of Requirements)) within two Working Days. The response must not be an automated email and must acknowledge the matter being raised.	Exemptions are at the sole discretion of the Contracting Authority.	11+ queries/issues not receiving a response within two Working Days, per Service Period (quarterly).	Between 4-10 queries/issues not receiving a response within two Working days, per Service Period (quarterly).	Up to 3 queries/issues not receiving a response within two Working Days, per Service Period (quarterly).
4. Customer Service	The Provider shall maintain a high-quality service throughout the Term, minimising the number of complaints received from Contracting Authority staff (or staff of any Crown or public body accessing the Services pursuant to Paragraph 6 of Appendix 5 (Specification of Requirements)) regarding the quality of service provided by the Provider and/or its Sub-Contractors. The Contracting Authority will take all reasonable steps to investigate the complaint but may, in its sole discretion, uphold the complaint raised.	Where the complaint relates to an activity outside of the Provider's control. Exemptions are at the sole discretion of the Contracting Authority.	11+ complaints per Service Period (quarterly).	6-10 complaints per Service Period (quarterly).	0-5 complaints per Service Period (quarterly).

5. IT	The Provider's VMS (digital portal) must be available/live during core office hours (09:00 – 17:00 UK time) Monday to Friday.	UK bank holidays. Exemptions are at the sole discretion of the Contracting Authority.	7+ occurrences where the VMS is not accessible during the stated times, per Service Period (quarterly).	4-6 occurrences where the VMS is not accessible during the stated times, per Service Period (quarterly).	Up to 3 occurrences where the VMS is not accessible during the stated times, per Service Period (quarterly).
6. Recruitment Process	Once the resourcing request has received all Contracting Authority internal approvals, the Provider will contact the hiring manager to arrange a briefing call within 1 Working Day in accordance with Paragraph 34(a) of Appendix 5 (Specification of Requirements).	Exemptions are at the sole discretion of the Contracting Authority.	11+ occurrences where the briefing call is not arranged within the stated timeframe, per Service Period (quarterly).	4-10 occurrences where the briefing call is not arranged within the stated timeframe, per Service Period (quarterly).	0-3 occurrences where the briefing call is not arranged within the stated timeframe, per Service Period (quarterly).
7. Recruitment Process	Generalists:  The Provider shall identify at least two suitable candidates per Generalist temporary role and submit their CVs to the hiring manager within 5 Working Days of the briefing call with the hiring manager. The suitability of the candidates shall be determined by the Contracting Authority (acting reasonably), having regard to the criteria specified in the assignment details.	Written authorisation from Contracting Authority staff to provide fewer CVs and/or to take longer. Exemptions are at the sole discretion of the Contracting Authority.	11+ occurrences where the KPI is not met, per Service Period (quarterly).	6-10 occurrences where the KPI is not met, per Service Period (quarterly).	0-5 occurrences where the KPI is not met, per Service Period (quarterly).
8. Recruitment Process	Specialists:  The Provider shall identify at least two suitable candidates per Specialist temporary role and submit their CVs to the hiring manager within 15 Working Days of the briefing call with the hiring manager. The suitability of the candidates shall be determined by the Contracting Authority (acting reasonably), having regard to the criteria specified in the assignment details.	Written authorisation from Contracting Authority staff to provide fewer CVs and/or to take longer. Exemptions are at the sole discretion of the Contracting Authority.	10+ occurrences where the KPI is not met, per Service Period (quarterly).	5-9 occurrences where the KPI is not met, per Service Period (quarterly).	0-4 occurrences where the KPI is not met, per Service Period (quarterly).
9. Invoicing	Invoices must be accurate and not contain any errors.	Exemptions are at the sole discretion of the Contracting Authority.	5+ errors within a Service Period (quarterly).	3-4 errors within a Service Period (quarterly).	0-2 errors within a Service Period (quarterly).

1.2 The SV KPIs that shall apply to the Services are set out below:

SV KPI	SV KPI Description	SV KPI Target	Rating
1.	Number of full-time equivalent (FTE) employment opportunities (including full time apprenticeships) in the Provider's Staff created as a result of the Contract, by UK region.	[This has been redacted]	
2.	Number of full-time equivalent (FTE) disabled people employed in the Provider's Staff as a result of the Contract, by UK region.	[This has been redacted]	
3.	Number of full-time equivalent (FTE) people from groups under-represented in the workforce employed in the Provider's Staff as a result of the Contract, by UK region.	[This has been redacted]	

Further social value commitments are intended to be discussed post-contract signature, and will be incorporated via the change control procedure (contract variation or CCN).

1.3 Reporting on the SV KPIs will take place on a quarterly basis (every Service Period) in accordance with Paragraph 1.2 of Part C of this Appendix.

1.4 The following reporting thresholds shall apply to the SV KPIs:

- (a) **Good.** The Provider is meeting or exceeding the SV KPI Targets that are set out in the table in Paragraph 1.2 above.
- (b) **Approaching Target.** The Provider is close to meeting the SV KPI Targets that are set out in the table in Paragraph 1.2 above.
- (c) **Requires Improvement.** The performance of the Provider is below that of the SV KPI Targets that are set out in the table in Paragraph 1.2 above.
- (d) **Inadequate.** The performance of the Provider is significantly below that of the SV KPI Targets that are set out in the table in Paragraph 1.2 above.

1.5 The following tables reflect the SV KPIs agreed in Paragraph 1.2:

Quarter	Year	Number of full-time equivalent (FTE) employment opportunities (including full time apprenticeships) in the Provider's Staff created as a result of the Contract, by UK region.			
		Good	Approaching Target	Requires Improvement	Inadequate
October-December	2022				
January-March	2023	[This has been redacted]	[This has been redacted]	[This has been redacted]	[This has been redacted]

Quarter	Year	Number of full-time equivalent (FTE) disabled people employed in the Provider's Staff as a result of the Contract, by UK region.			
		Good	Approaching Target	Requires Improvement	Inadequate
October-December	2022				
January-March	2023				
April-June	2023	[This has been redacted]	[This has been redacted]	[This has been redacted]	[This has been redacted]

Quarter	Year	Number of full-time equivalent (FTE) people from groups under-represented in the workforce employed in the Provider's Staff as a result of the Contract, by UK region.			
		Good	Approaching Target	Requires Improvement	Inadequate
October-December	2022				
January-March	2023				
April-June	2023	[This has been redacted]	[This has been redacted]	[This has been redacted]	[This has been redacted]

2. CA Rebates

- 2.1A CA Rebate will apply where the Provider fails to achieve the Target Performance Level for a KPI (excluding the SV KPIs), and the amount of the CA Rebate will be calculated in accordance with the table set out in Paragraph 2.2 below.
- 2.2The amount of CA Rebates payable for each Service Period shall not exceed the CA Rebate Cap. Any CA Rebate payable in accordance with Paragraph 2.1 above shall be applied to the next invoice payable following the Performance Review Meeting for that Service Period.

KPI Rating (as per the table set out in Paragraph 1.1 above)	CA Rebate
Amber	25% rebate of the total amount of the Management Fee and the Pre-Identified (Nominated) Worker Fee payable by the Contracting Authority in the first invoice issued for the Month following the Performance Review Meeting
Red	50% rebate of the total amount of the Management Fee and the Pre-Identified (Nominated) Worker Fee payable by the Contracting Authority in the first invoice issued for the Month following the Performance Review Meeting

## Part C: Performance Monitoring

### 1. Performance Monitoring and Performance Review

- 3.3 Within ten (10) Working Days of the end of each Service Period, the Provider shall provide the Contracting Authority with performance monitoring reports ("**Performance Monitoring Reports**") which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
- 3.3.1 for each KPI (excluding the SV KPIs), the actual performance achieved over the Service Period, and that achieved over the previous Service Periods in that Contract Year;
  - 3.3.2 a summary of all KPI Failures that occurred during that Service Period;
  - 3.3.3 details of all KPI Failures including the cause of each KPI Failure and the action being taken to reduce the likelihood of recurrence;
  - 3.3.4 for any repeat KPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.3.5 the CA Rebates to be applied in respect of the relevant period indicating the failures and KPIs to which the CA Rebates relate;
  - 3.3.6 a summary of its compliance with Clause 19.4 of the Contract, such data to be certified by a director of the Provider as being accurate and not misleading; and
  - 3.3.7 such other details as the Contracting Authority may reasonably require from time to time.
- 3.4 The Provider shall provide the Contracting Authority with the Social Value Report within ten (10) Working Days of the end of each Service Period in accordance with Paragraph 60 of Appendix 5 (Specification of Requirements).
- 3.5 The Parties shall attend meetings to discuss the Performance Monitoring Reports and the Social Value Report ("**Performance Review Meetings**") on a Quarterly basis. The Performance Review Meetings will be the forum for the review by the Provider and the Contracting Authority of the Performance Monitoring Reports and the Social Value Report. The Performance Review Meetings shall:
- 3.5.1 unless otherwise agreed by the Contracting Authority, take place within two (2) weeks of the Performance Monitoring Reports and the Social Value Report being issued by the Provider at such location and time (within normal business hours) as the Contracting Authority shall reasonably require;
  - 3.5.2 be attended by the Provider's Contract Manager and the Contracting Authority's Contract Manager; and
  - 3.5.3 be fully minuted by the Provider and the minutes will be circulated by the Provider to all attendees of the relevant meeting and any other recipients agreed at the relevant meeting.
- 3.6 The minutes of the preceding Quarter's Performance Review Meeting will be agreed and signed by both the Provider's Contract Manager and the Contracting Authority's Contract Manager at each meeting.
- 3.7 The Provider shall provide to the Contracting Authority such documentation as the Contracting Authority may reasonably require in order to verify the level of the performance by the Provider and the calculations of the amount of CA Rebates in respect of any specified Service Period.

#### **4. Satisfaction Surveys**

- 4.1 The Contracting Authority may undertake satisfaction surveys in respect of the Provider's delivery of the Services ("**Satisfaction Surveys**"). The Contracting Authority shall be entitled to notify the Provider of any aspects of their performance of the delivery of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.



## **Part D: Continuous Improvement**

### **1. Services Improvement**

- 4.2 The Provider shall, throughout the Term, identify new or potential improvements to the provision of the Services with a view to reducing the Contracting Authority's costs (including the Fees) and/or improving the quality and efficiency of the Services and their supply to the Contracting Authority.
- 4.3 The Provider shall:
  - 4.3.1 notify the Contracting Authority of any new or potential improvements to the provision of the Services that it identifies pursuant to Paragraph 1.1;
  - 4.3.2 provide sufficient information on each improvement notified to the Contracting Authority pursuant to Paragraph 1.1 to enable the Contracting Authority to decide whether the improvement should be implemented; and
  - 4.3.3 provide any further information that the Contracting Authority requests on any improvement notified to the Contracting Authority pursuant to Paragraph 1.1.
- 4.4 The Contracting Authority may, in its sole discretion, accept, reject and/or propose amendments to any improvement notified by the Provider to the Contracting Authority pursuant to Paragraph 1.1.
- 4.5 If the Contracting Authority wishes to implement any improvement notified by the Provider pursuant to Paragraph 1.1, the Contracting Authority shall request a Variation in accordance with the Variation Procedure. Any such variation shall not be valid until the Parties have signed the Variation Form and appended it to the Order Form.

### **5. Gainshare**

- 5.1 At any time during the Term, the Provider may make a proposal for gainshare and shall notify the Contracting Authority of its proposals for:
  - 5.1.1 reducing the Provider's costs (including the Fees) in providing the Services to the Contracting Authority; and
  - 5.1.2 apportioning the cost savings resulting from the implementation of its proposals between the Contracting Authority and the Provider.
- 5.2 The Contracting Authority may, in its sole discretion, accept, reject and/or propose amendments to any proposal notified by the Provider to the Contracting Authority pursuant to Paragraph 2.1.
- 5.3 If the Contracting Authority wishes to implement any proposal notified by the Provider pursuant to Paragraph 2.1, the Contracting Authority shall request a Variation in accordance with the Variation Procedure. Any such variation shall not be valid until the Parties have signed the Variation Form and appended it to the Order Form.
- 5.4 During each Performance Review Meeting, the Contracting Authority and the Provider shall review and discuss any potential improvements identified by the Provider pursuant to Paragraph 1.1 and any proposals for gainshare identified by the Provider pursuant to Paragraph 2.1.

## Appendix 9:

### MANAGEMENT INFORMATION AND RECORDS

#### 1. Definitions

- 1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

<b>“Change of Control”</b>	has the meaning given in Clause 47.3 of the Contract;
<b>“Contracting Authority’s Contract Manager”</b>	means the person appointed by the Contracting Authority to manage the Contract as named in the Order Form and any subsequent replacement;
<b>“Financial Year”</b>	means the period from 1 April in any given year to 31 March of the subsequent year;
<b>“Management Information”</b>	means the management information specified in Part B of Appendix 2 (Prices for Services), Paragraph 44 of Appendix 5 (Specification of Requirements), Part C of Appendix 8 ( <i>Performance Management</i> ) and Part A of this Appendix to be provided by the Provider to the Contracting Authority;
<b>“SME”</b>	means any business with fewer than 250 employees and either an annual turnover below £45 million or a total balance sheet less than £40 million;
<b>“Supply Chain Transparency Report”</b>	means the report provided by the Provider to the Contracting Authority in the form set out in Annex 1 to Part A of this Appendix; and
<b>“VCSE”</b>	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

## **Part A: Management Information**

### **1. Supply Chain Transparency Reports**

- 1.1 In addition to any other Management Information requirements set out in the Contract, the Provider shall at no charge provide timely, full, accurate and complete Supply Chain Transparency Reports to the Contracting Authority in accordance with the provisions of this Appendix.
- 1.2 The Provider shall provide the Supply Chain Transparency Reports within 15 Working Days after the end of each consecutive period of six (6) months in a Financial Year, the first six (6) month period commencing on the first day of April following the Commencement Date.
- 1.3 The Provider shall provide the Supply Chain Transparency Reports:
  - 1.3.1 in the format set out in Annex 1, and the Provider shall provide all of the information described in Annex 1; and
  - 1.3.2 in accordance with any guidance issued by the Contracting Authority from time to time.
- 1.4 The Contracting Authority may update the Supply Chain Transparency Report template set out in Annex 1 from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

# Annex 1 to Part A: Supply Chain Transparency Report Template

	Financial Year 20[ ]			
	Under this Contract		Provider as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[ ]	100%	£[ ]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[ ]	[ ]	£[ ]	[ ]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[ ]	[ ]	£[ ]	[ ]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[ ]	[ ]	£[ ]	[ ]

## **Part B: Record Keeping**

### **1. Records to be kept by the Provider**

1.1 For the purposes of Clause 34.1 of the Contract, the Provider shall keep and maintain the following records of the operation of the Contract:

- 1.1.1 This Contract, its Appendices and all amendments to such documents;
- 1.1.2 All other documents which this Contract expressly requires to be prepared;
- 1.1.3 Records relating to the appointment and succession of the Provider's Contract Manager and each member of the Key Personnel;
- 1.1.4 All operation and maintenance manuals prepared by the Provider for the purpose of maintaining the provision of the Services;
- 1.1.5 Documents prepared by the Provider or received by the Provider from a third party relating to an event of Force Majeure;
- 1.1.6 All formal notices, reports or submissions made by the Provider to the Contracting Authority's Contract Manager in connection with the provision of the Services;
- 1.1.7 All certificates, licences, registrations or warranties in each case obtained by the Provider in relation to the provision of the Services;
- 1.1.8 Documents prepared by the Provider in support of claims for the Fees;
- 1.1.9 Documents submitted by the Provider pursuant to the Variation Procedure;
- 1.1.10 Documents submitted by the Provider pursuant to invocation by it or the Contracting Authority of the Dispute Resolution Procedure;
- 1.1.11 Documents evidencing any change in ownership or any interest in any or all of the shares in the Provider, where such change may cause a Change of Control; and including documents detailing the identity of the persons changing such ownership or interest;
- 1.1.12 Invoices and records related to VAT sought to be recovered by the Provider;
- 1.1.13 Financial records, including audited and un-audited accounts of the Provider;
- 1.1.14 Records required to be retained by the Provider by Law, including in relation to health and safety matters and health and safety files and all consents;
- 1.1.15 All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them; and
- 1.1.16 All other records, notices or certificates required to be produced and/or maintained by the Provider pursuant to this Contract.

## Appendix 10:

### EXIT MANAGEMENT

#### 1 Definitions

1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

<b>“CA Rebate”</b>	has the meaning given in Paragraph 1 of Appendix 8 (Performance Management);
<b>“Contracting Authority Data”</b>	<p>means:</p> <ul style="list-style-type: none"><li>c) 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 are:<ul style="list-style-type: none"><li>(i) supplied to the Provider by or on behalf of the Contracting Authority; and/or</li><li>(ii) which the Provider is required to generate, process, store or transmit pursuant to the Contract; and/or</li></ul></li><li>d) any Personal Data for which the Contracting Authority is the Data Controller;</li></ul>
<b>“Contracting Authority System”</b>	means the Contracting Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Contracting Authority or the Provider in connection with the Contract which is owned by the Contracting Authority or licensed to it by a third party and which interfaces with the Provider System or which is necessary for the Contracting Authority to receive the Services;
<b>“Contract Year”</b>	<p>means:</p> <ul style="list-style-type: none"><li>(a) a period of 12 months commencing on the Commencement Date; or</li><li>(b) thereafter a period of 12 months commencing on each anniversary of the Commencement Date;</li></ul> <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
<b>“Emergency Exit”</b>	means any termination of the whole or part of this Contract which:

	<ul style="list-style-type: none"> <li>a) occurs by the service of a termination notice where the period of notice given by the Party serving notice to terminate is less than 3 months; or</li> <li>b) wrongful termination or repudiation of this Contract by either Party;</li> </ul>
<b>“Exit Information”</b>	has the meaning given in Paragraph 2.1 of this Appendix;
<b>“Exit Plan”</b>	means the plan produced and updated by the Provider during the Term in accordance with Paragraph 3 of this Appendix;
<b>“KPI”</b>	has the meaning given in Paragraph 1 of Appendix 8 (Performance Management);
<b>“Ordinary Exit”</b>	<p>means any termination of the whole or any part of this Contract which occurs:</p> <ul style="list-style-type: none"> <li>a) by the service of a termination notice where the period of notice given by the Party serving notice to terminate is greater than or equal to 3 months; or</li> <li>b) as a result of the expiry of the Initial Contract Period or any Extension Period;</li> </ul>
<b>“Partial Termination”</b>	means termination of the Contract in respect of part of the Services only without terminating the whole of the Contract pursuant to Clause 39.2.2 of the Contract;
<b>“Provider System”</b>	means the information and communications technology system used by the Provider in implementing and performing the Services including any software, equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Contracting Authority System);
<b>“Replacement Services”</b>	means any services which are the same as or substantially similar to any of the Services and which the Contracting Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of the Contract, whether those services are provided by the Contracting Authority internally and/or by any third party;
<b>“Sites”</b>	<p>means any premises (including the Contracting Authority’s premises, the Provider’s premises or third party premises):</p> <ul style="list-style-type: none"> <li>a) from, to or at which:</li> </ul>

	<ul style="list-style-type: none"> <li>(i) the Services are (or are to be) provided; or</li> <li>(ii) the Provider manages, organises or otherwise directs the provision or the use of the Services; or</li> </ul>
	<ul style="list-style-type: none"> <li>b) where: <ul style="list-style-type: none"> <li>(i) any part of the Provider System is situated; or</li> <li>(ii) any physical interface with the Contracting Authority System takes place;</li> </ul> </li> </ul>
<b>“SV KPI Target”</b>	has the meaning given in Paragraph 1 of Appendix 8 (Performance Management);
<b>“Target Performance Level”</b>	has the meaning given in Paragraph 1 of Appendix 8 (Performance Management);
<b>“Termination Assistance Notice”</b>	has the meaning given in Paragraph 4.1 of this Appendix;
<b>“Termination Assistance Period”</b>	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Provider is required to provide the Termination Services as such period may be extended pursuant to Paragraph 3.2 of this Appendix; and
<b>“Termination Services”</b>	means the services and activities to be performed by the Provider pursuant to the Exit Plan, including those activities listed in Annex 3 of this Appendix and any other services required pursuant to the Termination Assistance Notice.

## **2. Obligations to assist on re-tendering of Services**

2.1 On reasonable notice at any point during the Term, the Provider shall provide to the Contracting Authority and/or its potential Replacement Providers (subject to the potential Replacement Providers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Contracting Authority of any invitation to tender and/or to facilitate any potential Replacement Providers undertaking due diligence:

- 2.1.1 details of the Service(s);
- 2.1.2 an inventory of Contracting Authority Data in the Provider's possession or control;
- 2.1.3 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;



- 2.1.4 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 2.1.5 in accordance with Clause 55.1 of the Contract, all information relating to its Staff engaged in providing the Services under the Contract; and
  - 2.1.6 such other material and information as the Contracting Authority shall reasonably require,
- (together, the “**Exit Information**”).
- 2.2 The Provider acknowledges that the Contracting Authority may disclose the Provider's Confidential Information to an actual or prospective Replacement Provider or any third party whom the Contracting Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Contracting Authority may not under this Paragraph 2.2 disclose any Provider's Confidential Information which is information relating to the Provider's or its Sub-Contractors' prices or costs).
- 2.3 The Provider shall:
- 2.3.1 notify the Contracting Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Contracting Authority regarding such proposed material changes; and
  - 2.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Contracting Authority.
- 2.4 The Provider may charge the Contracting Authority for its reasonable additional costs to the extent the Contracting Authority requests more than 4 updates in any 6 month period.
- 2.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Provider shall be such as would be reasonably necessary to enable a third party to:
- 2.5.1 prepare an informed offer for those Services; and
  - 2.5.2 not be disadvantaged in any subsequent procurement process compared to the Provider (if the Provider is invited to participate).

### **3. Exit Plan**

- 3.1 The Provider shall, within 6 months after the Commencement Date, deliver to the Contracting Authority an Exit Plan which:
- 3.1.1 sets out the Provider's proposed methodology for achieving an orderly transition of the relevant Services from the Provider to the Contracting Authority and/or its Replacement Provider on the Partial Termination, expiry or termination of this Contract;
  - 3.1.2 complies with the requirements set out in Paragraph 3.2 of this Appendix; and
  - 3.1.3 is otherwise reasonably satisfactory to the Contracting Authority.

- 3.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then the matter shall be referred for resolution in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Plan shall set out, as a minimum:
- 3.3.1 how the Exit Information is obtained;
  - 3.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Provider may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Provider of all such reasonable assistance as the Contracting Authority shall require to enable the Contracting Authority or its sub-contractors to provide the Services;
  - 3.3.3 a mechanism for dealing with Partial Termination on the assumption that the Provider will continue to provide the remaining Services under this Contract;
  - 3.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - 3.3.5 the management structure to be employed during the Termination Assistance Period;
  - 3.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - 3.3.7 how the Services will transfer to the Replacement Provider and/or the Contracting Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Contracting Authority's technology components from any technology components operated by the Provider or its Sub-Contractors (where applicable);
  - 3.3.8 the scope of the Termination Services that may be required for the benefit of the Contracting Authority (including such of the services set out in Annex 3 of this Appendix as are applicable);
  - 3.3.9 a timetable and critical issues for providing the Termination Services;
  - 3.3.10 how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - 3.3.11 procedures to deal with requests made by the Contracting Authority and/or a Replacement Provider for staffing information pursuant to Clause 55.1 of the Contract; and
  - 3.3.12 how each of the issues set out in this Appendix will be addressed to facilitate the transition of the Services from the Provider to the Replacement Provider and/or the Contracting Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

- 3.4 The Parties acknowledge that the migration of the Services from the Provider to the Contracting Authority and/or its Replacement Provider may be phased, such that certain of the Services are handed over before others.
- 3.5 The Provider shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Appendix in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Provider shall submit the revised Exit Plan to the Contracting Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Finalisation of the Exit Plan**

- 3.6 Within 20 Working Days after service of a notice of termination by either Party or 6 months prior to the expiry of this Contract, the Provider will submit for the Contracting Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Appendix and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 3.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Contracting Authority then such disputed matters shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Provider shall provide the Termination Services in accordance with the principles set out in this Appendix and the last approved version of the Exit Plan (insofar as relevant).

### **4. Termination Services**

#### **Notification of Requirements for Termination Services**

- 4.1 The Contracting Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Provider (a **"Termination Assistance Notice"**) at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a notice of termination. The Termination Assistance Notice shall specify:
- 4.1.1 the date from which Termination Services are required;
  - 4.1.2 the nature of the Termination Services required; and
  - 4.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Provider ceases to provide the terminated Services.
- 4.2 The Contracting Authority shall have:
- 4.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Provider ceases to

provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Provider to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

- 4.2.2 the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Provider to such effect.

#### **Termination Assistance Period**

- 4.3 Throughout the Termination Assistance Period, or such shorter period as the Contracting Authority may require, the Provider shall:
  - 4.3.1 continue to provide the Services (as applicable) and, if required by the Contracting Authority pursuant to Paragraph 4.1 of this Appendix, provide the Termination Services;
  - 4.3.2 in addition to providing the Services and the Termination Services, provide to the Contracting Authority any reasonable assistance requested by the Contracting Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Contracting Authority and/or its Replacement Provider; and
  - 4.3.3 provide the Services and the Termination Services at no detriment to the Target Performance Levels and the SV KPI Targets, save to the extent that the Parties agree otherwise in accordance with Paragraph 4.4 of this Appendix.
- 4.4 If the Provider demonstrates to the Contracting Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Provider's ability to meet one or more particular KPIs in accordance with Appendix 8 (*Performance Management*), the Parties shall vary the relevant KPI and/or the applicable CA Rebate using the Variation Procedure to take account of such adverse effect.

#### **Termination Obligations**

- 4.5 The Provider shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 4.6 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Appendix) in respect of the Services that have been terminated, the Provider shall comply with its obligations under Clauses 50.4.2 and 52 of the Contract.
- 4.7 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Contracting Authority to the Provider in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

### **ANNEX 3: SCOPE OF THE TERMINATION SERVICES**

#### **1.2 The Termination Services to be provided by the Provider shall include such of the following services as the Contracting Authority may specify:**

- (a) ceasing all non-critical software changes (except where agreed in writing with the Contracting Authority);
- (b) notifying the Sub-Contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Contracting Authority and/or the Replacement Provider after the end of the Termination Assistance Period;
- (d) delivering to the Contracting Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
- (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (g) providing the Contracting Authority with any problem logs which have not previously been provided to the Contracting Authority;
- (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (j) reviewing all software libraries used in connection with the Services and providing details of these to the Contracting Authority and/or the Replacement Provider;
- (k) providing assistance and expertise as necessary to support the Contracting Authority and/or the Replacement Provider develop the migration plan for business operations and Contracting Authority Data to the Replacement Provider, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Contracting Authority Data;
- (l) provide all necessary support, equipment, tools, and software such as data migration services and/or automated programming interfaces, in order to enable and support the execution of the migration plan by the Contracting Authority and/or Replacement Provider;

- (m) making available to the Contracting Authority and/or the Replacement Provider expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Contracting Authority (acting reasonably) at the time of termination or expiry;
- (n) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) agreeing with the Contracting Authority a handover plan for all of the Provider's responsibilities as set out in Appendix 5 (Specification of Requirements);
- (q) delivering copies of the production databases (with content listings) to the Contracting Authority's and/or the Replacement Provider's operations staff (on appropriate media) as reasonably requested by the Contracting Authority;
- (r) assisting with the loading, testing and implementation of the production databases;
- (s) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- (t) in respect of the maintenance and support of the Provider System, providing historical performance data for the previous 12 months;
- (u) assisting in the execution of a parallel operation of the maintenance and support of the Provider System until the end of the Termination Assistance Period or as otherwise specified by the Contracting Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (v) providing an information pack listing and describing the Services for use by the Contracting Authority in the procurement of the Replacement Services;
- (w) answering all reasonable questions from the Contracting Authority and/or the Replacement Provider regarding the Services;
- (x) agreeing with the Contracting Authority and/or the Replacement Provider a plan for the migration of the Contracting Authority Data to the Contracting Authority and/or the Replacement Provider;
- (y) providing access to the Contracting Authority and/or the Replacement Provider during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Contracting Authority and/or the Replacement Provider:
  - (i) to information and documentation relating to the transferring Services that is in the possession or control of the Provider or its Sub-Contractors (and the Provider agrees and shall procure that its Sub-Contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Provider's normal business hours, to members of the Staff who have been involved in the provision or management of the Services and who are still employed or engaged by the Provider or its Sub-Contractors; and

- (z) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Contracting Authority and/or Replacement Provider staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Contracting Authority and/or the Replacement Provider of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - (iii) providing the Contracting Authority and/or the Replacement Provider with access to such members of the Provider's or its Sub-Contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Provider or its Sub-Contractors.

**1.3 The Provider shall:**

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.2(k) of this Annex for agreement by the Contracting Authority at the time of termination or expiry of this Contract;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.2(o) of this Annex, providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Contracting Authority's database migration plan agreed pursuant to Paragraph 1.2(v) of this Annex, providing skills and expertise of a reasonably acceptable standard.

**1.4 To facilitate the transfer of knowledge from the Provider to the Contracting Authority and/or its Replacement Provider, the Provider shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Contracting Authority and/or the Replacement Provider.**

**1.5 The information which the Provider shall provide to the Contracting Authority and/or the Replacement Provider pursuant to Paragraph 1.2(x) of this Annex shall include:**

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Contracting Authority and/or the Replacement Provider;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Contracting Authority pursuant to this Appendix;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Contracting Authority; and

(g) any relevant interface information.

**1.6 During the Termination Assistance Period the Provider shall grant any agent or personnel (including employees, consultants and Providers) of the Replacement Provider and/or the Contracting Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that any such agent or personnel (including employees, consultants and Providers) having access to any Sites pursuant to this Paragraph 1.5 shall:**

- (i) sign a confidentiality undertaking in favour of the Provider (in such form as the Provider shall reasonably require); and
- (ii) during each period of access comply with the security, systems and facilities operating procedures of the Provider relevant to such Site and that the Contracting Authority deems reasonable.



## **Appendix 11:**

### **PRE-IDENTIFIED (NOMINATED) WORKERS**

#### **1. Definitions**

- 1.1 In this Appendix, the following words shall have the following meanings and they shall supplement Clause 1 (Interpretation):

<b>“Applicant”</b>	has the meaning given in Clause 1 of the Contract;
<b>“Candidate”</b>	means a person identified by the Contracting Authority as having the appropriate experience, skills and expertise likely to meet the Contracting Authority’s future requirements for Temporary Placements;
<b>“Contract”</b>	means the written agreement between the Contracting Authority and the Provider consisting of the Order Form and the Call-Off Terms and Conditions;
<b>“CV”</b>	has the meaning given in the definition of Applicant set out in Clause 1 of the Contract;
<b>“Pre-Identified (Nominated) Worker”</b>	means a Candidate referred to the Provider for future Temporary Placements in accordance with paragraph 2.1 of this Appendix;
<b>“Temporary Placement”</b>	has the meaning given in Clause 1 of the Contract; and
<b>“Temporary Worker”</b>	has the meaning given in Clause 1 of the Contract.

#### **2. Pre-Identified (Nominated) Workers**

- 2.1 The Contracting Authority may identify Candidates and refer them to the Provider for future Temporary Placements.
- 2.2 The Provider shall:
- 2.2.1 contact any Candidate referred to the Provider by the Contracting Authority pursuant to paragraph 2.1 of this Appendix;
  - 2.2.2 assess the Candidate’s interest in being registered in the Provider’s portfolio of Temporary Workers for future Temporary Placements;
  - 2.2.3 where the Candidate confirms their interest in being registered in the Provider’s portfolio of Temporary Workers, carry out the checks required (pursuant to Clause 13.1.11(b) of the Contract and paragraphs 34(b) (iv) and (v) of Appendix 5 (Specification of Requirements)) on the Candidate; and
  - 2.2.4 where the Candidate passes the checks required by paragraph 2.2.3 of this Appendix, register the Candidate in the Provider’s portfolio of Temporary Workers.
- 2.3 The Provider shall ensure contact with all Pre-Identified (Nominated) Workers that have been registered in the Provider’s portfolio of Temporary Workers in accordance with paragraph 2.2 of this

Appendix at least once per year to confirm their continued interest in being registered in the Provider's portfolio of Temporary Workers and that the details of their registration is up to date.

2.4 The Provider shall submit Applicant CV's to the Contracting Authority for consideration for each specific Temporary Placement in accordance with Clauses 13.1.7 to 13.1.10 of the Contract.

2.5 The Provider acknowledges and agrees that:

2.5.1 any referral made by the Contracting Authority pursuant to paragraph 2.1 of this Appendix does not constitute a recommendation or endorsement by the Contracting Authority that any Candidate is suitable for any specific Temporary Placement; and

2.5.2 the Contracting Authority does not provide any representation, warranty or guarantee that any Candidate referred by the Contracting Authority pursuant to paragraph 2.1 of this Appendix is suitable for any specific Temporary Placement.

## **Appendix 12:**

### **Tender – Technical and Social Value Submission**

[This has been redacted]

**Appendix 13:**  
**Processing Personal Data**

1. This Appendix shall be completed by the Parties, however the final decision as to the content of this Appendix shall be with the Contracting Authority at its absolute discretion.
  - 1.1 The contact details of the Contracting Authority's Data Protection Officer are: [This has been redacted]
  - 1.2 The contact details of the Provider data protection queries are: [This has been redacted]
  - 1.3 The Data Processor shall comply with any further written instructions with respect to Processing by the Data Controller.
  - 1.4 Any such further instructions shall be incorporated into this Appendix.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>• <i>Business contact details of the Provider's Staff for which the Provider is the Controller, when provided to the Contracting Authority by the Provider,</i></li> <li>• <i>Business contact details of any directors, officers, employees, agents, consultants and contractors (excluding the Provider's Staff) engaged in the performance of the Authority's duties under the Contract,</i></li> <li>• <i>Temporary Workers</i></li> <li>• <i>Where the Contracting Authority is sharing the personal data of Contracting Authority personnel/staff;</i></li> <li>• <i>Where the Contracting Authority is sharing the personal data of Pre-Identified (Nominated) Workers with the Provider</i></li> </ul>
Duration of the Processing	Processed for the durations specified in applicable Data Protection Legislation.
Nature and purposes of the Processing	For the supply of Services set out in the Call-Off Contract.
Type of Personal Data	Includes without limitation name, address, date of birth, NI number, telephone number, pay, images, special category data, criminal offence data

Categories of Data Subject	Includes but is not limited to Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers and Temporary Workers (includes Nominated workers), Contracting Authority staff/Civil Servants
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under law to preserve that type of data	Retained, returned or destroyed in accordance with applicable Data Protection Legislation provisions.
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract	All locations permissible under applicable Data Protection Legislation, and as per para 40 under Appendix 5.
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	All measures necessary to comply with applicable Data Protection Legislation.

**CALL-OFF AGREEMENT SIGNATURE PAGE**

**SIGNED BY OR ON BEHALF OF THE PARTIES**

**Authorised to sign for and on behalf of the Contracting Authority**

Signature	[This has been redacted]
Date	
Name in Capitals	
Address	

**Authorised to sign for and on behalf of the Provider**

Signature	[This has been redacted]
Date	
Name in Capitals	
Address	