

Bravo Project Reference: project 31193

636-17 Customer Call-Off Agreement

FRAMEWORK SCHEDULE 3 – FORM OF CONTRACT AND CALL-OFF TERMS

FORM OF CONTRACT

This contract is made on theday of February 2021

BETWEEN

- (1) Department for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London, SW1P 3JR (the "**Customer**"); and
- (2) Swarco UK Limited whose registered office is Unit 1 Maxted Corner, Maxted Road, Hemel Hempstead, HP2 7RA whose company number is 2754698 (the "**Supplier**")

WHEREAS the Customer wishes to have provided the following goods and/or services namely the outright purchase of Electric Vehicle Charging Points (EVCPs) with an "end to end" service delivery including site surveys, design, supply & installation, commissioning and up to 3 year warranty period pursuant to the ESPO Framework Agreement for Vehicle Charging Infrastructure Framework reference 636_17.

NOW IT IS AGREED THAT

1. The Supplier will provide the goods and/or services in accordance with the terms of the call-off contract (reference number ecm_60647 and Contract Documents.
2. The Customer will pay the Supplier the amount due in accordance with the terms of the call off agreement and the Contract Documents.
3. The following documents comprise the Contract Documents and shall be deemed to form and be read and construed as part of this agreement:
 - This Form of Contract
 - The Master Contract Schedule
 - The documents as listed below

Defra Specification

- 001 C05 - Specification Cover Page for Contents Rev1.0 Final 05-11-2020
- 002 C05.01 636 Specification - updated
- 003 C05.02 Defra Specification Requirements V3.0 05-11-2020
- 004 C05.03 Site Location Rev2.0 Revised Final 14-12-2020
- 005 C05.04 Defra Risk Assessment Template Rev1.0 Final 06-11-2020
- 006 C05.05 Defra charge point Product Fast Rev3.0 Final 05-11-2020
- 007 C05.06 DEFRA Product Spec Rapid Charge point Rev3.0 Final 05-11-2020
- 008 C05.07 Electric vehicle charge points bay painting V1 Final 05-11-2020

009 C05.08 Defra Charge Point Data Spec Rev1.0 Final

010 Clarification Schedule V7 referenced (ESPO Clarification Tracker V7 Final Rev3.0 14-12-20 PDF Update & Adjustments for the Contract 04-03-2021 Final for Contract)

010 Clarification Schedule V7 referenced (ESPO Clarification Tracker V7 Final Rev3.0 14-12-20 PDF Update & Adjustments for the Contract 04-03-2021 Final for Contract) & Cover

Price List

011 C03 ESPO Price List V14a SWARCO V2 (1) with extensions amended

Key Personnel

012 Role A – Health and Safety – [REDACTED]

013 Role B – Site Manager / Project Manager – [REDACTED]

014 Role C – Surveyor / Designer for building fabric and civils – [REDACTED]

015 Role D – Electrical Engineer / Designer – [REDACTED]

016 Role E – Testing and Commissioning Engineer – [REDACTED]

Supplier Solution – Tender Submission and Associated Documents

017 007- C02_Tender_Question_Template _ V4_Final_06-11-2020 _ _SWARCO_V0.4

018 Swarco timing plan Feb updated PH - 04.03.2021 PLM Comment on Commencement Date FINAL

Swarco Policies

019 Swarco Quality and Environmental Policy Referenced SGUK- COMP-POL-001 dated 21/02/2020

020 Swarco Health & Safety Policy & Statement of Intent SGUK-COMP-POL-002 dated 21/02/2020

021 Swarco Equality and Diversity Policy SGUK-HR-POL-010 dated 01/04/2019

022 Swarco Anti Modern Slavery & Human Trafficking Policy SGUK-HR-POL-002 dated 01/04/2019

023 Swarco Anti Bribery and Corruption Policy SGUK-HR-POL-003 dated 01/04/2019 revised now 01/10/2020

024 Swarco Corporate Social Responsibility Policy SGUK_HR-POL-005 dated 01/04/2019 revised now 21/09/2020

025 Swarco Legal and Other Requirements SUL-COMP-PRO018 dated 06/09/2018 revised now 27/11/2020

Swarco Company Certificates

026 Certificate of Registration under the Waste (England & Wales) Regulations 2011 – Dated 10/04/2019

027 Environmental Management System – ISO 14001:2015 dated 16-05-2020

028 Swarco ISO9001 certificate FS 723090 Expiry Date 15-05-2023

029 Swarco 45001 certificate BSI Portal confirms "pass" awaiting certificate

030 Swarco Safecontractor certificate KH9777 Expiry Date 16/09/21

031 Swarco SMAS Worksafe certificate 103483 Expiry date 28/10/2021

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

**Signed electronically via BRAVO for and on behalf
of DEPARTMENT FOR ENVIRONMENT, FOOD AND
RURAL AFFAIRS**

By electronic means ([REDACTED]) an authorised officer

**Signed electronically via BRAVO by SWARCO UK
LIMITED**

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

(Document Reference ecm_60647)

MASTER CONTRACT SCHEDULE

(ESPO Framework Reference 636_17)

1. TERM
<p>Commencement Date</p> <p>08 March 2021</p> <p>Expiry Date</p> <p>07 September 2021</p> <p>Extension Period</p> <p>6 months</p>
2. GOODS AND/OR SERVICES REQUIREMENTS
<p>Goods required</p> <p>Note – This is a Services and Deliverable Call-Off Contract for the Installation of Vehicle Charging Infrastructure</p> <p>Services and Deliverables required</p> <p>The Services and the Deliverables are more fully described within the Specification referenced C05 and its attachments. This is an “end to end” solution for the Supplier to undertake design and build installations for the car charging facilities. The initial sites for the car charging facilities have been identified but these may change and / or the number of sites may be increased subject to their being availability of budget to deliver additional car charging facilities.</p> <p>Optional Services required</p> <p>There are options for the Customer to increase the duration of Warranties and / or Maintenance Agreements for the car charging facilities. If required, these options will be commissioned by the Customer by written instructions.</p> <p>Please refer to the Price Schedule documents referenced - 011 C03 ESPO Price List V14a SWARCO V2 (1) with extensions amended.</p>
<p>Performance/Delivery Location/Premises</p>

The Performance / Delivery Location / Premises are more fully described within the Specification referenced C05 and its attachments.

The Access Arrangements : Offices opening hours 09.00am to 5.00pm, depots 08.30am to 4.30 pm. Access to sites needs to be agreed at least 1 week prior to site visit with Facilities Management Team Leaders as some sites are not occupied by Facilities staff. Contact details will be shared following contract award.

Site security restrictions: Additional security measures are required at one of our sites and from 01/04/2021 all contractors staff must hold a valid Counter Terrorist Check (CTC) security clearance to access Weybridge site.

Site Location Plans can be obtained via Google satellite maps prior to attending site. Any clarifications required should be directed to Defra project manager.

Standards

Compliance to IET code of practice Electric Vehicle Charging Equipment

Quality Standards

As fully described within the Specification referenced C05 and its attachments.

Technical Standards

As fully described within the Specification referenced C05 and its attachments.

Where there is any conflict between the Suppliers submission proposals and the Quality Standards and Technical Standards described by the Customer – the Customers Standards shall prevail.

Disaster Recovery and Business Continuity

No Additional Defra Requirements - Not Required

3. SUPPLIER SOLUTION

Supplier Solution

006-C02_Tender_Technical_Question_Template_V4_Final_06-11-2020_-_SWARCO_V0.4

Implementation Plan referenced 018 Swarco timing plan Feb updated PH - 04.03.2021 PLM
Comment on Commencement Date FINAL

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

Account Manager Account Manager – [REDACTED]

[REDACTED]

[REDACTED]

Role A – Health & Safety - [REDACTED]

[REDACTED]

[REDACTED]

Role B Site Manager / Project Manager - [REDACTED]

[REDACTED]

[REDACTED]

Role C – Surveyor / Designer – Fabric /Civils - [REDACTED]

[REDACTED]

[REDACTED]

Role D – Electrical Engineer - [REDACTED]

[REDACTED]

[REDACTED]

Role E - Testing and Commissioning Engineer - [REDACTED]

[REDACTED]

[REDACTED]

Supplier's inspection of the Premises and Infrastructure (where relevant)

The Supplier shall conduct and inspection and survey of each site location and undertake a feasibility study to determine its suitability for the installation of the car charging facilities and advise the Customer's Representative with a Report.

Providing the Customer's Representative accepts the Suppliers proposals contained within the Feasibility Study, the Customer will instruct the Supplier to undertake the design services to produce the construction details, calculations, drawings, details of the works and activities for the installation of the car charging facilities together with the schedule of rates with sufficient detail for the Customer to verify compliance with the Schedule of Rates contained within [document reference]. The Suppliers design proposal will include an installation plan identifying the installation activities, durations, key milestones and additional Customer Requirements to enable the installation works to proceed.

All the above as more fully described within the Specification referenced C05 and its attachments.

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

Implementation Plan and Milestones or e.g. delivery schedule (including dates for completion and/or delivery)

Milestone	Deliverables	Milestone Date	Customer Responsibilities (if applicable)	Delay Payments
Site Surveys and Feasibility Studies	21 Site Surveys and Feasibility Studies completed	02/04/2021	Defra to provide access to the site locations	£ Nil
Car Chargers reserved / Ordered	Units Ordered and placed for delivery / retention in secure warehouse facility	09/04/2021	Defra to raise Purchase Order for the Car Charging Unit requirements identified from the Site Survey and Feasibility Studies	£ Nil
Designs for Car Charging completed and submitted	Detailed design proposals and supporting documentation submitted to Defra for approval	30/04/2021	Defra to approve the Feasibility Studies to progress the Detailed Design	£ Nil
Installation works for the Car Chargers	Installation Works for the Car Chargers to commence	11/06/2021	Defra to "approve" the detailed design submissions and method statements	£ Nil
Car Charging Installation and Commissioning	Installation and commissioning Works completed	13/08/2021	Defra accepts the commissioning process as being complete in accordance with the contract requirements	£ Nil

(i) In relation to the required engineer response time to rectify faults with electric car charging units, a Critical Service Failure shall include a delay in servicing the demand for repairs ordered by the Customer in excess of 72 hours more than twice in any one 1 Month period or more than three times in any rolling twelve (12) week period.

(ii) In relation to the [loss of communication] a Critical Service Failure shall mean a loss of two (2) or more [loss of communication] during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) for more than 24 hours accumulated in three (3) Month period, or 48 hours in any rolling twelve (12) month period.

Regular telecommunication is expected for the management of any issues arising affecting project delivery.

Customer's Responsibilities (where appropriate)

Provide access to the site locations

Make payment for services and works completed in accordance with the Call-Off Contract

Customer's equipment (where appropriate)

Use of Electrical Supply Equipment at each Site Location within the switch room (or other location) for the connection to the Works under this Call-Off Contract.

6. CHARGES AND PAYMENT

Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS))

The Customer shall pay all sums properly due and payable to the Supplier in respect of the Contract Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.

The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and Purchase Order Number together with a detailed breakdown of the Contract Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Customer to substantiate the invoice.

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

The Customer may place Purchase Orders from both the Department of the Environment, Food and Rural Affairs or from the Environment Agency.

Defra Payment Process

All Defra invoices should be sent, quoting a valid purchase order number (PO Number), to:

By e-mail [REDACTED]

With a copy provided to the Project Manager [REDACTED] using the email address below (Note payments are authorised by the Project Manager)

[REDACTED]

7. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information:

- All individual items rates information contained within the C03 ESPO Price List
- Information not in the public domain relating to Swarco UK Limited's business arrangements and technical solutions proposed in the Tender Submission
- Curriculum Vitae and other Personnel information / accreditations

8. AGREED AMENDMENTS TO THE CALL-OFF TERMS

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

Defra C06.03 Draw Down Process for Purchase Orders to apply for the commissioning of Services and Works under this agreement.

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. INTRODUCTION

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

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

Description	Details
Subject matter of the processing	N/A
Duration of the processing	N/A
Nature and purposes of the processing	N/A
Type of Personal Data	N/A
Categories of Data Subject	N/A
Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data.	N/A

THE CUSTOMER

- and -

THE SUPPLIER

CALL-OFF TERMS

relating to

**THE SUPPLY, DESIGN, INSTALLATION AND
COMMISSIONING OF ELECTRIC VEHICLE
CHARGING POINTS (EVCPS)**

CONTRACT REFERENCE

NUMBER ecm_60647

CALL-OFF TERMS

BETWEEN

- (1) The customer identified in the Form of Contract (the "Customer"); and
- (2) The company identified in the Form of Contract (the "Supplier").

WHEREAS

- (A) The Eastern Shires Purchasing Organisation ("ESPO") selected Framework Providers, including the Supplier, to provide Goods and/or Services;
- (B) the Supplier undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 636 dated 01 Jul 2017 (the "Framework Agreement");
- (C) ESPO and the Supplier have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Supplier for the Supplier to supply Goods and/or Services;
- (D) The Customer enters into this Contract on the terms hereinafter appearing.

1. GENERAL PROVISIONS

1.1 Definitions

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

"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in the Master Contract Schedule and/or any other Contract Document;
"Call-off Terms"	means these terms and conditions in respect of the provision of the Goods and/or Services, together with the schedules hereto;

"Change in Law"	means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-off Terms which comes into force after the Commencement Date;
"Commencement Date"	means the date set out in the Master Contract Schedule and/or the Form of Contract Document;
"Commercially Sensitive Information"	means the confidential information listed in set out at Schedule 9 of the Framework Agreement (if any) the Master Contract Schedule and/or a Contract Document comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the charges produced by the Supplier pursuant to schedule 6 of the Framework Agreement;
"Contract"	means the contract entered into by the Customer and the Supplier pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement comprising of the Form of Contract Document, these Call-Off Terms, the schedules hereto, the Master Contract Schedule, and any other Contract Document;
"Contract Document"	means all documents listed in the Form of Contract Document and/or within a schedule referred to in the Form of Contract Document;
"Contract Period"	means the period from the Commencement Date to: a) the Expiry Date; or b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Master Contract Schedule and/or any other Contract Document, for the full and proper performance by the Supplier of its obligations under the Contract;
"Contracting Authority"	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer;

"Control"	means control as defined in section 1124 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller"	shall take the meaning given in the GDPR;
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
"Critical Service Failure"	shall have the meaning given in the Master Contract Schedule and/or any other Contract Document;
"Customer Data"	<p>means:</p> <p>(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:</p> <p>(i) are supplied to the Supplier by or on behalf of the Customer; or</p> <p>(ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Customer is the Data Controller;</p>
"Customer Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Customer's Premises"	the premises identified in the Master Contract Schedule and/or any other Contract Document and which are to be made available for use by the Supplier for the provision of the Goods and/or Services on the terms set out in the Contract;

"Customer Responsibilities"	means the responsibilities of the Customer set out in the Master Contract Schedule and/or any other Contract Document;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to the Contract;
"Customer's Confidential Information"	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Officer"	shall take the meaning given in the GDPR;
"Data Subject"	shall take the meaning given in the GDPR;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Default"	means any breach of the obligations of the Supplier (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 Supplier or Supplier's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Customer;
"Delay Payments"	means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule and/or any other Contract Document;

"Deliverables"	means those deliverables listed in the Master Contract Schedule and/or any other Contract Document (if any);
"Delivery"	means the time at which the physical possession of the Goods have been transferred to the Customer and installed when required under this agreement by the Supplier and/or the Services have been supplied to the Customer by the Supplier and the Customer has issued the Supplier with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 41.2;
"DPA 2018"	means Data Protection Act 2018;
"Employment Checks"	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equality Legislation"	means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;
"Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;
"ESPO"	means the Eastern Shires Purchasing Organisation of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES;
"Expiry Date"	means the date set out in the Master Contract Schedule and/or any other Contract Document;
"Form of Contract"	means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Supplier and which lists all of the Contract Documents;

"FOIA"

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

"Force Majeure"

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

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of government, local government or Regulatory Bodies;
- d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - i) any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and
 - ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

"GDPR"

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

"Good Industry Practice"

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

"Goods and/or Services"	means the goods (including Hired Goods other than where expressly excluded) and/or services to be supplied as specified in the Form of Contract, Master Contract Schedule and/or any other Contract Document and, where goods are Hired Goods, all substitutions, replacements or renewals of such goods and all related accessories, manuals and instructions provided for them;
"Guarantee Period"	means the period stated in section 2 Requirement of the ITT, and the period stated by the Supplier in its ITT response;
"Hired Goods"	means Goods hired from the Supplier by the Customer under this agreement;
"Holding Company"	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
"Implementation Plan"	means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated in accordance with Schedule 2;
"Information"	has the meaning given under section 84 of the FOIA;
"Initial Term"	the period commencing on the Commencement Date and ending on the Expiry Date;
"Intellectual Property Rights" or "IPRs"	<p>means:</p> <ul style="list-style-type: none">a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; andc) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
ITT Response	means the response submitted by the Supplier to the Invitation to Tender issued by the Customer on [insert date];
"Key Personnel"	means the individuals (if any) identified in the Master Contract Schedule and/or any other Contract Document;

"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
"LED"	means Law Enforcement Directive (Directive (EU) 2016/680);
"Management Information"	means the management information specified in Framework Schedule 7 (Management Information Requirements);
"Master Contract Schedule"	means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement;
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier;
"Party"	means the Supplier or the Customer and "Parties" shall mean both of them;
"Personal Data"	shall take the meaning given in the GDPR;
"Premises"	means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document;
"Processor"	shall take the meaning given in the GDPR;

"Prohibited Act"

Means:

a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO a financial or other advantage to:

i) induce that person to perform improperly a relevant function or activity; or

ii) reward that person for improper performance of a relevant function or activity; or

b) committing any offence:

i) under the Bribery Act 2010; or

ii) under legislation creating offences concerning fraudulent acts; or

iii) at common law concerning fraudulent acts relating to the Contract or any other contract with ESPO and/or Customer and/or any other Contracting Body; or

c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer or any other Contracting Body

"Project Specific IPRs"

means:

(a) IPRs in the Services, Deliverables and/or Goods provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or

(b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Supplier (or by a third party on behalf of the Supplier) under the Contract,

"Property"

means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with the Contract;

"Protective Measures"

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

"Public Contracts Directive"	means Directive 2014/24/EU of the European Parliament and of the Council;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance;
"Regulated Activity"	means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;
"Rental Period"	means the period of hire as set out in clause 4.8;
"Related Supplier"	means any person who provides services to the Customer which are related to the Services from time to time;
"Replacement Supplier"	any third party Supplier of Replacement Services appointed by the Customer from time to time;
"Replacement Service"	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Customer internally and/or by any third party;
"Request for Information"	means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to Schedule 1;

"Services"	means the services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents;
"Sites"	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services;
"Staff"	means all persons employed by the Supplier and/or any Sub-Contractor to perform its obligations under the Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, Suppliers and Sub-Contractors used in the performance of its obligations under the Contract;
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or any part thereof;
"Sub-Contractor"	means the third party with whom the Supplier enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Sub-processor"	means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;
"Supplier"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
"Supplier Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Supplier's Representative"	means the representative appointed by the Supplier from time to time in relation to the Contract;
"Supplier Solution"	means the Supplier's solution for the provision of the Goods and/or Services as referred to in the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;

"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Technical Standards"	means the technical standards set out in the Framework Agreement and if applicable the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;
"Tender"	means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to Suppliers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;
"Term"	<p>the period of the Initial Term as may be varied by:</p> <p>(a) any extensions to this Contract which are agreed pursuant to clause 3; or</p> <p>(b) the earlier termination of this Contract in accordance with its terms;</p>
"TFEU"	means the Treaty on the Functioning of the European Union (OJ No. C 115);
"Transferring Goods"	means Goods, title to which transfers between the Parties in accordance with clause 4.6.1;
"Treaties"	means the Treaty of the European Union (OJ No. C 115) and TFEU;
"Undelivered Goods"	shall have the meaning given in clause 4.5.7;
"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with clause 11.2.2;
"Variation"	has the meaning given to it in clause 32;
"Variation Procedure"	means the procedure set out in clause 32;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 the schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;
- 1.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "clauses" and "schedules" are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and

1.2.11 in the event of and only to the extent of any conflict between the Master Contract Schedule, these Call-Off Terms, any other Contract Document any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.2.11.1 the Framework Agreement;

1.2.11.2 these Call-Off Terms;

1.2.11.3 the Master Contract Schedule; and

1.2.11.4 any other Contract Document or document referred to in these Call-Off Terms.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that it:

2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and

2.1.3 has entered into this Contract in reliance on its own due diligence alone.

2.2 The Customer hereby confirms that it has all requisite authority to enter into the Contract.

3. CONTRACT PERIOD

3.1 This Contract shall take effect on the Commencement Date and shall continue for the Term.

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

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

3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 19 shall apply.

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

- 4.1.1 The Supplier shall supply the Goods and/or Services in accordance with the Implementation Plan.
- 4.1.2 The Supplier shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration for the payment of the Contract Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.
- 4.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods and/or Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 4.1.4 The Supplier accepts responsibility subject to clause 4.1.4.3 for all damage to, shortage or loss of the Ordered Goods if:
 - 4.1.4.1 the same is notified in writing to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Customer; and
 - 4.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Supplier's instructions.
 - 4.1.4.3 In the event that installation of Ordered Goods is carried out by the Customer or a person appointed by the Customer, the Supplier shall not be liable for any loss of or damage to those Ordered Goods, arising directly, as a result of negligence or failure to follow the Supplier's written instructions by the Customer or such person appointed by the Customer when installing those Ordered Goods.
- 4.1.5 Where the Supplier accepts responsibility under clause 4.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit.
- 4.1.6 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and/or Services and the performance of its obligations under the Contract.

4.2 Provision and Removal of Equipment

- 4.2.1 Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 4.2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 4.2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 4.2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 4.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - 4.2.5.2 replace such item with a suitable substitute item of Equipment.
- 4.2.6 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

4.3 Quality

- 4.3.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and/or Services must be provided has not been specified in the Contract, the Supplier shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the supply of the Goods and/or Services commencing and in any event, the Supplier shall perform its obligations

under the Contract in accordance with the Law and Good Industry Practice.

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

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

4.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and

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

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

4.3.4 The Supplier shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any) (as a minimum), the Master Contract Schedule and/or any other Contract Document and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.

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

4.3.5.1 the Goods and/or Services conform in all respects with the specifications set out in the Master Contract Schedule and/or any other Contract Document and/or where applicable the Framework Agreement;

4.3.5.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Master Contract Schedule and/or any other Contract Document;

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

4.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Supplier by the Customer; and

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

4.4 **Delivery (Goods only)**

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

4.5 **Delivery**

- 4.5.1 The Supplier shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.
- 4.5.2 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.
- 4.5.3 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Supplier fails to deliver the Goods and/or Services within the time specified in accordance with clause 4.1.1 and/or the Master Contract Schedule and/or any other Contract Document and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 4.5.4 Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-Contractors at such place or places as set out in the Master Contract Schedule and/or any other Contract Document.
- 4.5.5 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 4.5.6 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 4.5.7 In the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Goods and/or Services**") then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and/or Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and/or Services are Delivered.
- 4.5.8 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in the Master Contract

Schedule and/or any other Contract Document. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Supplier.

4.6 Ownership and Risk

- 4.6.1 Ownership and passing of title in the Goods other than Hired Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or the point when the Goods have been delivered, installed and commissioned satisfactorily.
- 4.6.2 Risk in the Goods other than Hired Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered, installed and commissioned satisfactorily.
- 4.6.3 The Hired Goods shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Hired Goods (save the right to possession and use of the Hired Goods subject to the terms and conditions of this agreement).
- 4.6.4 The Supplier shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Customer's quiet possession of the Hired Goods.
- 4.6.5 On Delivery, the risk of loss or theft of, or damage or destruction to the Hired Goods shall pass to and shall remain at the sole risk of the Customer during the Rental Period, save that the Customer shall not bear the risk of such loss, theft, damage or destruction:
 - (a) caused by the negligence of the Supplier, its sub-contractor or its agent; or
 - (b) whilst the Hired Goods are in possession or control of the Supplier, its sub-contractor or its agent, including during any maintenance of the Hired Goods by the Supplier, its sub-contractor or its agent.

4.7 Guarantee

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

Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

4.8 Rental Period

The Rental Period starts on the date that the Customer takes Delivery of the Hired Goods and shall continue for a period of [Not Applicable] unless this agreement is terminated earlier in accordance with its terms.

4.9 Customer's responsibilities

4.9.1 The Customer shall during the term of this agreement:

- 4.9.1.1 ensure that the Hired Goods are used only for the purposes for which they are hired, and operated in accordance with any operating instructions provided to the Customer by the Supplier;
- 4.9.1.2 keep the Supplier fully informed of those material matters relating to the Hired Goods within the knowledge of the Customer;
- 4.9.1.3 at all times keep the Hired Goods in the possession or control of the Customer;
- 4.9.1.4 permit the Supplier to inspect the Hired Goods at reasonable times following reasonable notice and shall grant reasonable access and facilities for such inspection;
- 4.9.1.5 not, without the prior written consent of the Supplier, part with control of, sell or offer for sale, underlet or lend the Hired Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
- 4.9.1.6 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Hired Goods;
- 4.9.1.7 not suffer or permit the Hired Goods to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hired Goods are so confiscated, seized or taken, the Customer shall notify the Supplier;
- 4.9.1.8 not use the Hired Goods for any unlawful purpose; and
- 4.9.1.9 deliver up the Hired Goods at the end of the Rental Period or on earlier termination of this agreement and allow the

Supplier access to any premises where the Hired Goods is located for the purpose of removing the Hired Goods.

- 4.9.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Hired Goods arising out of or in connection with any negligence, misuse, mishandling of the Hired Goods or otherwise caused by the Customer or its officers, employees, agents and contractors.

5. ASSISTANCE ON EXPIRY OR TERMINATION

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

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

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

- 6.1 The Supplier will maintain in place throughout the Contract Period business continuity arrangements and will review those arrangements at appropriate intervals and if necessary update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Supplier's organisation, delivery of the Goods and/or Services to the Customer is subject to a minimum of disruption.

7. MONITORING OF CONTRACT PERFORMANCE

- 7.1 The Supplier shall comply with the monitoring arrangements referred to in the Master Contract Schedule and/or any other Contract Document including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.
- 7.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form and periodically as specified in the Master Contract Schedule.

8. DISRUPTION

- 8.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 8.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.

- 8.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.
- 8.4 If the Supplier's proposals referred to in clause 8.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

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

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

NB. Contractual service levels need to be captured in Schedule 1.

- 9.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier.
- 9.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 9.3 Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
 - 9.3.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any defect in the Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
 - 9.3.2 reject the Goods (in whole or in part) and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;

- 9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;
- 9.3.4 carry out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Contract; and/or
- 9.3.5 without terminating the Contract, itself supply or procure the supply of all of the Goods and/or Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all of the Goods and/or Services in accordance with the Contract.

9.4 In the event that the supplier:

- 9.4.1 fails to comply with clause 9.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

- 9.4.2 persistently fails to comply with clause 9.3 above,

the Customer may terminate the Contract by giving the Supplier twenty (20) Working Days' notice in writing.

10. PREMISES

10.1 Inspection of Premises

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

10.2 Licence to Occupy Premises

- 10.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.
- 10.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 10.2.3 Save in relation to such actions identified by the Supplier in accordance with clause 10.2.1 and the Master Contract Schedule and/or any other Contract Document (if any), should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this clause 10.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 10.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 10.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

10.3 Property

- 10.3.1 Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary

agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 10.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 10.3.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 10.3.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 10.3.5 The Supplier shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.

11. PAYMENT AND CONTRACT CHARGES

11.1 Contract Charges

- 11.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).
- 11.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 11.1.3 If at any time during the Contract Period the Supplier reduces its rates of Charges for any Goods and/or Services which is provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.
- 11.1.4 The Parties acknowledge that the Supplier is required to pay to ESPO a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

11.2 Payment and VAT

- 11.2.1 Where the Supplier submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.
- 11.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 11.2.3 The Customer shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 11.2.4 Where the Customer fails to comply with clause 11.2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.2.2 after a reasonable time has passed.
- 11.2.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
 - (a) provisions having the same effect as clauses 11.2.1 – 11.2.3 of this Framework Agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 11.1.1 – 11.1.4 of this Framework Agreement.

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

- 11.2.6 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 11.2.7 The Supplier shall not suspend the supply of the Services and/or Goods (as applicable) unless the Supplier is entitled to terminate the Contract under clause 18.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late

payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

11.3 Recovery of Sums Due

- 11.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Customer.
- 11.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 11.3.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 11.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

11.4 Euro

- 11.4.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Supplier.

12. KEY PERSONNEL

- 12.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.
- 12.2 The Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 12.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor.

- 12.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and/or Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 12.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

13. SUPPLIER'S STAFF

- 13.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
- 13.1.1 any member of the Staff; or
 - 13.1.2 any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 13.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 13.3 Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 13.4 If the Supplier fails to comply with clause 13.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 13.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier and Staff have failed to comply with clause 13.2 shall be final and conclusive.

Children and Vulnerable Adults

- 13.6 Where the provision of the Goods and/or Services requires any of the Supplier's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Supplier will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions

subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Children's Barred List relating to the protection of children.

- 13.7 The Supplier will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.
- 13.8 The Supplier will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.
- 13.9 The Supplier will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups and will notify ESPO immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Customer.
- 13.10 Where the provision of the Goods and/or Services does not require any of the Supplier's employees or volunteers to work in a Regulated Activity but where the Supplier's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Supplier will in respect of such employees and volunteers:
 - a) carry out Employment Checks; and
 - b) carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Contract Period.
- 13.11 Where the principle obligation of the Supplier is to effect delivery of goods to a site and does not require any element of on-site working including installation and commissioning of Goods in a private dwelling, neither the Supplier nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Supplier shall ensure that those engaged in undertaking the duties under this contract, including employees, servants, agents and others are of suitable standing and good character and provide them with copies of the specification and secure their written acknowledgement of receipt and understanding.

14. STAFFING SECURITY

- 14.1 The Supplier shall comply with the Customer's staff vetting procedures (where provided to the Supplier) in respect of all Supplier Staff employed or engaged in the provision of the Goods and/or Services. The Supplier confirms that all Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Customer's staff vetting procedures.
- 14.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and/or Services to ensure compliance with the Customer's staff vetting procedures.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 Save as granted under this Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 15.2 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 15.3 With respect to the Suppliers obligations under the Contract, the Supplier warrants and represents that:
 - 15.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;
 - 15.3.2 it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by the Customer;
- 15.4 The Supplier shall during and after the Contract Period of the Contract indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
 - 15.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
 - 15.4.2 performance of the Supplier's responsibilities and obligations hereunder.
- 15.5 The Supplier shall promptly notify the Customer if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Supplier's responsibilities and obligations hereunder.
- 15.6 If a claim or demand is made or action brought to which clause 15.3 and/or 15.4 may apply, or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense and within a reasonable time either:
 - 15.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for

any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services; or

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

15.7 Customer Data

- 15.7.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 15.7.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise expressly Approved by the Customer.
- 15.7.3 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 15.7.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 15.7.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.
- 15.7.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
 - 15.7.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 15.7.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.

- 15.7.7 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

15.8 Protection of Personal Data

- 15.8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, where the Customer has completed the second column of the table in section 9 of the Master Contract Schedule to specify the processing of Personal Data it requires the Supplier to perform, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be determined by the Supplier.
- 15.8.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 15.8.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Goods and/or Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 15.8.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Contract (and in particular section 9 of the Master Contract Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Supplier's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of this Contract unless the Supplier is required by Law to retain the Personal Data.
- 15.8.5 Subject to clause 15.8.6, the Supplier shall notify the Customer immediately if it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 15.8.6 The Supplier's obligation to notify under clause 15.8.5 shall include the provision of further information to the Customer in phases, as details become available.
- 15.8.7 Taking into account the nature of all processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.8.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Customer following any Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 15.8.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
 - (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 15.8.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 15.8.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 15.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:
 - (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 15.8 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 15.8.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 15.8.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

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

15.9 Security of Premises

15.9.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all Staff comply with such requirements.

15.9.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

15.10 Confidentiality

15.10.1 Except to the extent set out in this clause 15.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

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

15.10.2 Clause 15.10.1 shall not apply to the extent that:

15.10.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 15.11 (Freedom of Information);

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

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

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

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

- 15.10.3 The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 15.10.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 15.10.5 At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 15.10.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 15.10.7 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under clause 7.2):
- 15.10.7.1 to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;
 - 15.10.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
 - 15.10.7.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 15.10.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

- 15.10.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 15.10.7 is made aware of the Customer's obligations of confidentiality.
- 15.10.9 Nothing in this clause 15.10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 15.10.10 In the event that the Supplier fails to comply with clause 15.10.1 to clause 15.10.6, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.
- 15.10.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

15.11 Freedom of Information

- 15.11.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 15.11.2 The Supplier shall and shall procure that its Sub-Contractors shall:
 - 15.11.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 15.11.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - 15.11.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 15.11.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 15.11.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 15.11.5 The Supplier acknowledges that (notwithstanding the provisions of clause 15.10) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and Services:
- 15.11.5.1 in certain circumstances without consulting the Supplier; or
- 15.11.5.2 following consultation with the Supplier and having taken their views into account,
- provided always that where clause 15.11.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.11.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 15.11.7 The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 15.11.5.

15.12 Transparency

- 15.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 15.12.2 Notwithstanding any other term of the Contract, the Supplier hereby gives his consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.
- 15.12.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

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

16. WARRANTIES AND REPRESENTATIONS

16.1 The Supplier warrants, represents and undertakes to the Customer that:

- 16.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 16.1.2 the Contract is executed by a duly authorised representative of the Supplier;
- 16.1.3 in entering the Contract it has not committed any Fraud;
- 16.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 16.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 16.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
- 16.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 16.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 16.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 16.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

16.2 The Supplier warrants represents and undertakes to the Customer that:

- 16.2.1 the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 16.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and/or Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
- 16.2.3 the Goods and/or Services are and will continue to be during the Contract Period:
 - 16.2.3.1 of satisfactory quality and fit for any purpose held out by the Supplier; and
 - 16.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer's specifications and documentation;
- 16.2.4 the Supplier shall remedy, free of charge, any material defect in the Hired Goods which manifests itself during the Rental Period, provided that, the Customer notifies the Supplier of any defect in writing, the Supplier is permitted to make a full examination of the alleged defect; and the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by the Customer's authorised personnel;
- 16.2.5 if the Supplier fails to remedy any material defect in the Hired Goods in accordance with clause 16.2.4, the Supplier shall, at the Customer's request, accept the return of part or all of the Hired Goods and make an appropriate reduction to the Contract Charges payable during the remaining term of the agreement;
- 16.2.6 in the three (3) Years prior to the Commencement Date:
 - 16.2.6.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - 16.2.6.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - 16.2.6.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract; and

16.2.6.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

16.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier.

16.4 The Supplier acknowledges and agrees that:

16.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

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

17. LIABILITIES

17.1 Liability

17.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

17.1.1.1 death or personal injury caused by its negligence or that of its Staff;

17.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;

17.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

17.1.1.4 any claim under clause 16.1;

17.1.1.5 any claim under the indemnity in clauses 11.2.6, 15.4, in respect of a breach of clause 15.10; or

17.1.1.6 any other matter which, by Law, may not be excluded or limited.

17.1.2 Subject to clause 17.1.4 and clause 17.1.5 the Supplier shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non-supply, of the Goods and/or Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any

advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

- 17.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 17.1.4 Subject always to clause 17.1.1 and clause 17.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
 - 17.1.4.1 all defaults resulting in direct loss to the property of the other Party shall in no event exceed ten million pounds (£10,000,000); and
 - 17.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed ten million pounds sterling (£10,000,000).
- 17.1.5 Subject to clause 17.1.1, in no event shall either Party be liable to the other for any:
 - 17.1.5.1 loss of profits;
 - 17.1.5.2 loss of business;
 - 17.1.5.3 loss of revenue;
 - 17.1.5.4 loss of or damage to goodwill;
 - 17.1.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 17.1.5.6 any indirect, special or consequential loss or damage.
- 17.1.6 The provisions of 17.1.1 shall not be taken as limiting the right of the Customer to recover as a direct loss:
 - 17.1.6.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
 - 17.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;
 - 17.1.6.3 the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier; and

17.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.

17.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

17.2 Insurance

Customers: the levels of insurance may be amended if the Contract is to be awarded via a further competition.

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

17.2.2 The Supplier shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.

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

17.2.4 The Supplier shall effect and maintain a product liability insurance policy, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than ten million pounds sterling (£10,000,000).

17.2.5 The Supplier shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of two million pounds sterling (£2,000,000) for each individual claim, or such higher limit as required by law from time to time 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.

17.2.6 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with

receipts or other evidence of payment of the latest premiums due under those policies.

- 17.2.7 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 17.2.8 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in clause 17.
- 17.2.9 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

17.3 Taxation, National Insurance and Employment Liability

- 17.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

18. TERMINATION

18.1 Termination on insolvency

- 18.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier where the Supplier is a company and in respect of the Supplier:
 - 18.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

- 18.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 18.1.1.3 a petition is presented for its winding up (which is not dismissed within ten (10) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 18.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 18.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 18.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 18.1.1.7 being a "small company" within the meaning of section 82(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 18.1.1.8 any event similar to those listed in clause 18.1.1.1 to 18.1.1.7 occurs under the law of any other jurisdiction.
- 18.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
- 18.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
 - 18.1.2.2 a petition is presented and not dismissed within ten (10) Working Days or order made for the Supplier's bankruptcy; or
 - 18.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 18.1.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or

18.1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days; or

18.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

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

18.2 Termination on Change of Control

18.2.1 The Supplier shall notify the Customer within ten (10) Working Days if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with twenty (20) Working Days' notice within six months of:

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

18.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

For the purposes of clause 18.2.1, the following shall be disregarded any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring.

18.3 Termination on Default

18.3.1 The Customer may terminate the Contract with twenty (20) Working Days' notice by giving written notice to the Supplier if the Supplier commits a Default and if:

18.3.1.1 the Supplier has not remedied the Default to the satisfaction of the Customer within thirty (30) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

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

18.3.1.3 the Default is a material breach of the Contract.

18.3.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Supplier.

18.3.3 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the period specified in clause 11.2, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 11.3 (Recovery of Sums Due).

18.4 Termination of Framework Agreement

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

18.5 Termination on Financial Standing

The Customer may terminate this Contract by serving twenty (20) Working Days' notice on the Supplier in writing where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier (as measured from the Commencement Date) which:

18.5.1 adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Contract; or

18.5.2 could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Goods and/or Services under this Contract.

18.6 Termination on Audit

The Customer may terminate this Contract by serving twenty (20) Working Days' notice in writing if the Supplier commits a Default of clauses 25.1 to 25.5 or clause 25.7 (Records and Audit Access).

18.7 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving twenty (20) Working Days' notice on the Supplier in writing if the Supplier refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Continuous Improvement and Benchmarking).

18.8 Partial Termination

If the Customer is entitled to terminate this Contract pursuant to this clause 18, it may (at its sole discretion) terminate all or part of this Contract.

18.9 Termination in compliance with Public Contracts Regulations 2015

The Customer may terminate Contracts where:

- 18.9.1 the Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;
- 18.9.2 the Supplier has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or
- 18.9.3 the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

18.10 Termination without Cause

Subject to the content of clause 19.1 the Customer shall have the right to terminate the Contract at any time by giving not less than twelve (12) months written notice to the Supplier.

19. CONSEQUENCES OF EXPIRY OR TERMINATION

19.1 Subject to clause 19.2 where the Customer terminates the Contract under clause 18.10 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under clause 18.10 (Termination without Cause).

19.2 The Customer shall not be liable under clause 19.1 to pay any sum which:

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

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

19.3 On the termination of the Contract for any reason, the Supplier shall:

- 19.3.1 within 10 Working Days return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;
- 19.3.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
- 19.3.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- 19.3.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 10.3. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
- 19.3.5 transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Supplier in respect of such Licensed Goods and/or contracts and/or any other items of relevance;
- 19.3.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or provide all such assistance and co-operation as the Customer may reasonably require;
- 19.3.7 return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and
- 19.3.8 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the

Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

- 19.4 If the Supplier fails to comply with clause 19.3.1 and 19.3.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-Contractors where any such items may be held.
- 19.5 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 19.3.5 and 19.3.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 19.6 At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 10.2.1 shall automatically terminate without the need to serve notice.
- 19.7 Save as otherwise expressly provided in the Contract:
- 19.7.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 19.7.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 15 (Intellectual Property Rights), 15.8 (Protection of Personal Data), 15.10 (Confidentiality), 15.11 (Freedom of Information), 17 (Liabilities), 19 (Consequences of Expiry or Termination), 24 (Prevention of Bribery and Corruption), 25 (Records and Audit Access), 26 (Prevention of Fraud), 30 (Cumulative Remedies), 36 (Conflicts of Interest), 38 (The Contracts (Rights of Third parties) Act 1999) and 41.1 (Governing Law and Jurisdiction).

20. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 20.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, suppliers, professional advisors and consultants comply with this clause. Any such press announcements or publicity proposed under this clause 20.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 20.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

- 20.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

21. ANTI-DISCRIMINATION

- 21.1 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 21.2 The Supplier shall take all reasonable steps to secure the observance of clause 21.1 by all Staff employed in performance of this Contract.
- 21.3 The Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or any other law, enactment, order or regulation.
- 21.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Supplier's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Supplier and any of the Supplier's Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 21.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or any other law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or the Supplier's Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.
- 21.6 The Supplier must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 21.7 The Supplier acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Supplier shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact analysis by the Customer. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

22. HEALTH AND SAFETY

- 22.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 22.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 22.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 22.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.
- 22.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Customer on request.

23. ENVIRONMENTAL REQUIREMENTS

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

- 24.1 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy (where provided), which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

24. PREVENTION OF BRIBERY AND CORRUPTION

- 24.1 The Supplier shall not:
 - 24.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

- 24.1.2 engage in and shall procure that all Supplier's Staff, consultants, agents or Sub-Contractors or any person acting on the Supplier's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and
 - 24.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.
- 24.2 The Supplier warrants, represents and undertakes that it has not:
- 24.2.1 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and
 - 24.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Contract;
- 24.3 The Supplier shall:
- 24.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;
 - 24.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 24;
 - 24.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 24 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
 - 24.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause 24. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;
 - 24.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

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

24.4.1 this clause 24; or

24.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

24.5 Without prejudice to its other rights and remedies under this clause 24, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

24.5.1 the amount of value of any such gift, consideration or commission; and

24.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 24.

25. RECORDS AND AUDIT ACCESS

25.1 The Supplier shall keep and maintain for six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and/or Services provided under it, and the amounts paid by the Customer.

25.2 The Supplier shall keep the records and accounts referred to in clause 25.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

25.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in clause 25.2 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:

25.3.1 to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all suppliers (including Sub-Contractors) of the Services;

25.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;

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

- 25.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;
 - 25.3.5 to review the Supplier's compliance with its security obligations set out in clause 15;
 - 25.3.6 to review any books of account kept by the Supplier in connection with the provision of the Service;
 - 25.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - 25.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - 25.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 25.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 25.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Contract Period and for a period of six (6) Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.
- 25.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services or supply of Goods save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 25.7 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:
- 25.7.1 all reasonable information requested by the Customer within the scope of the audit;
 - 25.7.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and/or Services; and
 - 25.7.3 access to the Staff.
- 25.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 25, unless

the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

26. PREVENTION OF FRAUD

- 26.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 26.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 26.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
 - 26.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing; and/or
 - 26.3.2 recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 26 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

27. TRANSFER AND SUB-CONTRACTING

- 27.1 The Supplier shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval.
- 27.2 The Supplier shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this clause 27, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

28. FORCE MAJEURE

- 28.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6

Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

- 28.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 28.3 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 28.1 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.
- 28.4 If an event of Force Majeure event affects the Services, the Customer may direct the Supplier to procure those Goods and/or Services from a third party Supplier in which case the Supplier will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 28.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to sub-clause 28.4, then the Customer will pay the Supplier (a) the Contract Price; and (b) the difference between the Contract Price and the new supplier's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Supplier's costs are greater than the Contract Price.

29. WAIVER

- 29.1 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.
- 29.2 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 39 (Notices).
- 29.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

30. CUMULATIVE REMEDIES

31. Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

31. FURTHER ASSURANCES

- 32.1 Each Party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

32. VARIATION

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

33. SEVERABILITY

- 33.1 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.
- 33.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

34. MISTAKES IN INFORMATION

- 34.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

35. SUPPLIER'S STATUS

- 35.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

36. CONFLICTS OF INTEREST

- 36.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 36.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 36.1 above arises or is reasonably foreseeable.

36.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the either party.

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

37. ENTIRE AGREEMENT

37.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

37.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

37.3 The Supplier acknowledges that it has:

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

37.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.

37.4 Nothing in clauses 37.1 and 37.2 shall operate to exclude Fraud or fraudulent misrepresentation.

37.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

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

38.1 A person who is not a Party to the Contract except ESPO in relation to its right to claim retrospective rebate from the Supplier under the payment clause has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

38.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more clauses of it.

39. NOTICES

- 39.1 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.
- 39.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 39.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 39.3 For the purposes of clause 39.2, the address, email address of each Party shall be the address and email address set out in the Master Contract Schedule and/or any other Contract Document.
- 39.4 Either Party may change its address for service by serving a notice in accordance with this clause.

40. LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

- 41.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a general change in law.
- 41.2 The Parties acknowledge that during the Term of this Contract the local government structure in the Customer's administrative areas may be subject to change. These administrative changes may give rise to the need for the Customer to terminate this Contract and/or seek its potential variation with any successor or assignee of the Customer. The Customer shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.

41. DISPUTES AND LAW

41.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

41.2 Dispute Resolution

- 41.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of

the dispute and such efforts shall involve the escalation of the dispute to the level of the Customer's Representative and the Supplier's Representative.

41.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

41.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 41.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 41.2.5 unless:

41.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

41.2.3.2 the Supplier does not agree to mediation.

41.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

41.2.5 The procedure for mediation is as follows:

41.2.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;

41.2.5.2 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 mediation provider appointed by CEDR to provide guidance on a suitable procedure;

41.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

41.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding

on the Parties once it is signed by their duly authorised representatives;

41.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

41.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

SCHEDULE 1

SERVICE LEVELS

1. SCOPE

This schedule 1 sets out the Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Supplier's performance of the Services by the Supplier will be monitored. This schedule comprises:

Part A: Service Levels;

Appendix to Part A - Service Levels; and

Part B: Performance Monitoring.

PART A

SERVICE LEVELS

2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels are to:

2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;

2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of Service for which it has contracted to deliver; and

2.1.3 incentivise the Supplier to meet the Service Levels.

3. SERVICE LEVELS

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

3.2 The Supplier shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of part B of this schedule 1.

3.3 If the level of performance of the Supplier of any element of the Services during Contract Period:

3.3.1 fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Contract Charges in accordance with Appendix A to this schedule 1; or

3.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 18.3

APPENDIX TO PART A

SERVICE LEVELS AND SEVERITY LEVELS

Service Level		Level achieved	
		Less than 100%	100%
1.	Level 1 – Emergency Fault – life threatening – the Suppliers Engineer will attend the car charging unit(s) and make safe within 2 hours of the “fault ticket” notification from the Defra Back Office Supplier (GeniePoint)	5%	95%
2.	Level 2 – Car Charging from the unit is not possible and no other car charging units are available and in service at the site - the Suppliers Engineer will attend the car charging unit(s) to fix / repair within 24 hours of the “fault ticket” notification from the Defra Back Office Supplier (GeniePoint)	5%	95%
3.	Level 3 – “Cosmetic” fault on the Car Charging unit which allows functionality but the service / service experience for the driver is not significantly impaired - the Suppliers Engineer will attend the car charging unit(s) to fix / repair within 7 working days of the “fault ticket” notification from the Defra Back Office Supplier (GeniePoint)	5%	95%
4.	Critical Service Failure involving loss of communication with the car charging unit - the Supplier is to attend the site / car charging unit and restore the data flow within 3 working days of a “fault ticket” notification from the Defra Back Office Supplier (GeniePoint) who will confirm SIM Card / Data Contract valid is valid and they are unable to re-establish remote contact with the unit.	5%	95%
5.	The Supplier will provide 7 days indicative notice to the Client’s Project Manager for any Planned Maintenance requirements to the Car Chargers installed under this Call-Off Contract to enable access arrangements to be confirmed with the Site Facilities Manager. The Supplier will confirm the Planned Maintenance visit with the Site Facilities Manager 24 to 48 hours prior to the Supplier’s Engineer visiting the site.	5%	95%

PART B

PERFORMANCE MONITORING

1. PRINCIPAL POINTS

- 1.1 This Part B provides the methodology for monitoring the Services:
 - 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or delivery of the Services ("**Performance Monitoring System**").
- 1.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

2. REPORTING OF SERVICE FAILURES

- 2.1 The Customer shall report all failures to achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
 - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
 - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that period;
 - 3.1.3 any Critical Service Failures and details in relation thereto;
 - 3.1.4 For any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
 - 3.1.5 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Service Level reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 3.2.1 take place within one (1) week of the reports being issued by the Supplier;
 - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
 - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Contract.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to clause 8.

SCHEDULE 2

IMPLEMENTATION PLAN AND MILESTONES

1. IMPLEMENTATION PLAN

- 1.1 The Supplier shall supply the Goods and/or Services in accordance with the Implementation Plan that it submitted to the Customer prior to the Commencement Date which shall be incorporated into the Master Contract Schedule and/or any other Contract Document.
- 1.2 If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the plan specified in the Master Contract Schedule or any other Contract Document) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.
- 1.3 The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

2. MILESTONES

- 2.1 The Supplier shall perform its obligations so as to meet each Milestone by the Milestone Date.
- 2.2 Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 2.3 If a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Customer provides the Supplier with confirmation in writing of its satisfaction that the Milestone has been met.
- 2.4 No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the

Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.

- 2.5 The Customer's rights to claim Delay Payments pursuant to this Contract shall be without prejudice to any right of the Customer to claim damages for breach.