

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

SEASCAPE CHARACTER ASSESSMENT FOR THE EAST MARINE PLAN AREAS - C21822

FORM OF CONTRACT

This contract is made on the 4th day of January 2024.

BETWEEN

(1) Marine Management Organisation (MMO) of [REDACTED] (the "**Customer**"); [REDACTED] and [REDACTED]

(2) Land Use Consultants Limited (LUC) whose registered office is [REDACTED] whose company number is [REDACTED] (the "**Service Provider**") ([REDACTED])

WHEREAS the Customer wishes to have provided the following goods and/or services namely There are two complementary and linked elements in this seascape assessment: (1) a character assessment; and (2) a visual resource mapping (VRM) element. A third requirement is (3) to analyse change in the East Marine Plan areas seascape since the last assessment was carried out over 10 years ago, pursuant to the ESPO Framework Agreement (reference 664_21)

NOW IT IS AGREED THAT

1. The Service Provider will provide the goods and/or services in accordance with the terms of the call-off contract (reference number 664_21 and Contract Documents.
2. The Customer will pay the Service Provider 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 in the Contract Document Schedule reference Schedule 1, 2 and Annex 1

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

Signed for and on behalf of

MARINE MANAGEMENT ORGANISATION

By [redacted] an Authorised officer

Defra Group Commercial)

[redacted])

Authorised Officer

Print name:

Signed by

Land Use Consultants)

[redacted])

[redacted])

[redacted]

**This document relates to and forms part of the Call-Off Terms
(Document Reference 664-21)**

MASTER CONTRACT SCHEDULE

(ESPO Framework Reference 664-21 Consultancy Services)

1. TERM

Seascape Character Assessment for the East Marine Plan Areas - C21822

Commencement Date

08 January 2024

Expiry Date

25 March 2024

2. GOODS AND/OR SERVICES REQUIREMENTS

Services and Deliverables required

Deliverable 1 (D1): Inception report including an agreed detailed programme of work and project plan (including risks), preferably in MS Project.

Milestone 1 (M1) Mid-way progress reports relating to completion of the objectives described in this specification.

Twice monthly, minuted meetings with the key individuals to review progress against objectives, report risks and issues, and to forward plan.

D2: Survey results from land-based and possibly boat-based activities.

D3: Stakeholder engagement plans and workshops with sufficient time to incorporate relevant feedback, and field work outputs.

D4: Technical reports associated with data gathering exercises. Includes report on understanding changes (described in 3) above).

D5: Draft spatial deliverables to MMO requirements

D6: Draft final report(s) in MS Word to MMO Style template (provided at inception) in plain English.

D7: Final geospatial deliverables to MMO requirements incorporating the comments and recommendations identified at the draft final stage. Key deliverables will include visual resource maps, identification of marine character areas along with characteristics, descriptions and pictures in an interactive PDF.

<p>D8: Final report(s) incorporating the comments and recommendations identified at the draft final stage.</p> <p>Other deliverables may be statistical code or programmes, webinars, databases, raw data, survey returns etc. Optional Services required.</p> <p>Please find the full specification under Annex 1.</p>
<p>Performance/Delivery Location/Premises</p> <p>Services will be delivered to the Customer from the supplier’s premises.</p>
<p>Standards</p> <p>Quality Standards</p> <p>It is essential that any evidence used in preparing the final report has been collected, processed and published with rigour and that appropriate quality assurance (QA) processes are in place, and embedded, within the contracting organisation. The Contractor will provide the MMO with relevant assurances around QA procedures and/or certifications from recognised standards providers (eg ISO). Please refer to the MMO’s Quality Assurance of Evidence processes for guidance as to what the MMO will be looking for.</p>
<p>Disaster Recovery and Business Continuity</p> <p>N/A</p>
<p>3. SERVICE PROVIDER SOLUTION</p>
<p>Service Provider Solution</p>

Seascope Character Assessment Update and Change Analysis for the East Marine Plan Areas

1. A proposal to the Marine Management Organisation

Reference: MMO1369 East Seascope 2023

1 December 2023

2. Introduction

LUC is delighted to submit this proposal to the Marine Management Organisation (MMO) to provide updates seascope character assessment and analysis of change in the East Marine Plan Areas. We understand the importance of Seascope Character Assessment, having supported the MMO through its national programme of assessments across all Marine Plan Areas.

LUC is an award-winning environmental consultancy providing planning, impact assessment, landscape design and ecology services to a wide range of public and private sector clients. With a track record of

over 50 years and a team of over 200 skilled professionals, we bring a passion for the environment and a determination to achieve sustainable development on behalf of our clients. We have offices in Bristol, Cardiff, Edinburgh, Glasgow, London, Manchester and Sheffield.

3. Structure of our proposal

This proposal document follows the structure of the evaluation criteria set out in the specification, as follows:

1. Approach and Methodology
2. Project Management and Project Plan
3. Project Team and Experience
4. Risk
5. Sustainability
6. Health and Safety (not requested)
7. Cost Proposal

4. A note on timescale

We understand that the Project is to be delivered before the end of March 2024. We have highlighted in previous correspondence with the MMO the likely challenges with this timescale, and our Proposal seeks to include work that can realistically be completed. We highlight the risks that remain (refer to Section 4) in terms of allocating resources to tasks within particular topic areas. We will discuss these potential issues at the Project inception, and seek to agree pragmatic solutions.

5. 1. Approach & Methodology

5.1 Approach

LUC's method and approach to the Project will be grounded good practice, notably Natural England's 'Approach to Seascape Character Assessment' (NECR105), and will build on our practical experience of successfully completing Seascape Character Assessments for other marine plan areas. Our method builds on this experience to present a practical, achievable and costeffective methodology to deliver the requirements of the brief.

Our preferred approach is to work closely with the MMO client team, and our method presented below allows for regular contact via Teams/telephone to review key decisions and present emerging findings.

5.2 Nature of requirements

The objectives of this project are set out in the specification and interpreted further below, in relation to the two main elements of the Project:

1. Update of the Seascape Character Assessment for the East Marine Plan Areas:

- To produce an updated Seascape Character Assessment, incorporating updated GIS datasets. This will involve a review of the approach taken to the 2012 assessment,¹ the boundaries identified, and the key characteristics that were defined, including the subsequent amendments following consultation.²
- To undertake a comprehensive desk study which collates relevant datasets and information to inform the updated Seascape Character Assessment. To ensure consistency the same datasets which have informed seascape character assessments for other Marine Plan Areas will be used.
- To undertake a field survey, which is sufficient within the time available to ground truth the updated Seascape Character Assessment and to gather information on seascape change. We note that time is limited and have proposed a focused programme of land-based site work.
- To undertake stakeholder consultation to validate the update. Again we have proposed a focused approach to bring in stakeholder input within the time available.

2. Analyse change in the seascape of the East Marine Plan Areas:

- To develop and agree a methodology for analysing change within the seascape. We envisage that this will be based around key themes, and will include quantitative and qualitative analysis of change.
- To carry out the analysis of change. It will be important to distinguish between changes in the seascape and changes arising from any updates to the Seascape Character Assessment.

The following additional objectives are also noted in the specification:

- To create a new unified GIS data layer, updating the national map of seascape for all marine plan areas. This will comprise updating the existing data layer with the new character areas for the East Marine Plan Areas, and updating the accompanying MEDIN-compliant metadata.
- To consider and discuss how a natural capital approach would result in a different approach. We note that the intention is not to apply this within the present work, but to think about how such an approach might affect the outcomes of the Seascape Character Assessment.

Proposed Method

5.3 Task 1 Inception and project design

We would initiate the study with an inception meeting via Teams. At the meeting we would:

- Confirm the above objectives and scope, including the approach to be taken to field survey and stakeholder consultation;
- Discuss relevant lessons learned from previous seascape studies that may expedite the current work;

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- Agree data and evidence to be assimilated (based on the master list compiled for our previous MMO contracts). We have assumed that relevant data, including marine charts and base mapping
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¹ URS Scott Wilson (2012) [Seascape Characterisation around the English Coast \(Marine Plan Areas 3 and 4 and Part of Area 6 Pilot Study\)](#). Natural England Commissioned Report NECR106.

² MMO (2012) [Seascape character area assessment East Inshore and East Offshore marine plan areas](#).

held by the MMO, will be provided for the study area soon after contract award, in Esri Arc Map format, and at the necessary resolution and projection. We have not costed for any additional data purchase and are able to source many nationally available (open) data sources ourselves;

- Discuss the approach to understanding change, and the types of change that could be incorporated into the analysis;
- Agree format of project outputs – including required map templates, report templates and GIS shapefile attributes; and
- Review timelines, milestones and deliverables as set out in this submission.

Following this meeting we would prepare a short inception report, including a detailed agreed programme of work and project plan (including risks).

5.4 Task 2: Gathering and assimilating data

This desk study will collate spatial information into an ArcGIS project for the project. Datasets to be collated will be consistent with those used to inform our previous Seascape Character Assessments. An example data list can be found in Annex 1 to the Seascape Character Assessment for the South East Inshore marine plan area.³ Our first-hand knowledge and experience of using the required data will be invaluable for the efficient management of this contract.

In addition to GIS data we will bring together project libraries compiled for previous Seascape Character Assessments, including documents and reference material that has previously been invaluable. We will use this to cross-check information and provide additional background.

5.5 Task 3: Desk based review of the Seascape Character Assessment

We envisage that this stage will be a review and update of the existing assessment, rather than a new assessment. We will carefully review the approach, findings and outputs of the 2012 reports, with particular reference to the Natural England 'Approach to Seascape Character Assessment' and the more recent Seascape Character Assessments prepared for the MMO.

As part of our work on the Seascape Character Assessments for the North East and South East Marine Plan Areas, we reviewed the interfaces with the East Marine Plan Areas. Minor amendments were made to Marine Character Area (MCA) boundaries, particularly at the southern interface. These changes will be carried over but otherwise we do not envisage making substantial amendments to the number or extent of the MCAs.

Key characteristics will be reviewed against updated datasets and the need for amendments will be carefully considered on a case by case basis. MCA profiles will be revised to follow the format used for all other Seascape Character Assessments.

5.6 Task 4: Develop methodology for understanding seascape change

The seascape is a dynamic environment, changing on a daily and a seasonal basis with tides and weather. Longer-term changes in the coastal and marine environment can take many forms, but preliminary analysis suggests that changes influencing perception of seascape can be grouped into three key themes:

- Land use change along the coastal edge, including built development such as settlement expansion, caravan parks, ports and harbours.

³ LUC (2018) [Seascape Character Assessment for the South East Inshore marine plan area](#). MMO Project No.1134.

- Coastal change arising from erosion and depositional processes, recognising that the East Marine Plan Areas contain some of the most rapidly eroding coastlines in the UK, as well as responses to this such as sea walls and sand-scaping.
- Offshore change, arising from above water development within the marine environment, such as wind turbines or oil and gas platforms.

Change in the landscape is typically measured using both quantitative and qualitative methods. The former involves identifying measurable change using consistent datasets collected over time. The latter focuses on change as observed in the field. We intend to use both approaches to inform the analysis.

We are not aware of qualitative approaches having been specifically applied to monitoring seascape change, but will draw on experience in monitoring change in onshore landscape. The following types of data could be used in undertaking quantitative analysis, assuming appropriate datasets can be identified:

- Settlement boundaries and patterns of consented development;
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- Records of change to the coastal edge over time;
 - Locations of coastal defences;
 - Locations of offshore development (above surface features).

We would seek to discuss the approach to quantitative analysis at the project outset, to establish what datasets the MMO may have access to that could inform this element. A method statement for the change analysis will be developed at this stage and agreed with the MMO.

5.7 Task 5: Field survey

We consider that some element of field survey will be essential to an understanding of change in the seascape. We do not consider that there is benefit in undertaking boat-based surveys for this piece of work, especially at this time of year. We have included for five days for two surveyors to conduct land-based field work. This is likely to involve driving the length of the coast within the East Marine Plan Areas, using coastal roads where available, and making regular stops to record the qualitative effect of identified changes on the experience of seascape character.

5.8 Task 6: Stakeholder consultation

We propose to hold a single online stakeholder workshop to capture an audience of relevant and informed stakeholders and user groups within the marine plan areas. The stakeholder workshop will be a half-day event, which we suggest will follow the same format as workshops we have run successfully for previous Seascape Character Assessments. However, in the interests of efficiency, we propose a single online event rather than multiple in-person events as before. They will be structured as follows:

- A short presentation by LUC and the MMO explaining the background to the work, the reasons for the update, and the approach being taken to the change analysis;
- Workshop sessions to discuss emerging changes, review of key characteristics, and forces for change; and
- Feedback on 'what next' and opportunities to comment further.

LUC staff will facilitate the workshop, using methods like Google Jamboard/Miro and Apps such as Slido and Mentimeter if appropriate, which can draw out issues, options and gather views/evidence. LUC will keep a written record of key points for inclusion as an annex to the output report.

5.9 Task 7: Finalise updated Seascape Character Assessment

Following the results of field work and the stakeholder validation exercise, we will update, where necessary, the key characteristics and the MCA profiles, and compile these into a draft report for the East Marine Plan Areas. The report will be fronted by introduction and methodology sections, drawing on those prepared for previous Seascape Character Assessments where appropriate, to ensure consistency of presentation.

5.10 Task 8: Undertake analysis of change

The quantitative and qualitative strands of the analysis will be brought together in a report, setting out the results by MCA. Change within offshore MCAs may be quite limited, but changes within inshore MCAs are likely to be more extensive. The report will be fronted by introduction and methodology sections. We propose that the analysis of change would be a separate report to the Seascape Character Assessment, to maintain separation between the baseline description and the more analytical report on change.

5.11 Task 9: Reporting and data outputs

Draft technical reports will be sent to the MMO electronically for comment, prior to production of a final version.

The final outputs of the study will be prepared to include:

- GIS shapefile and MEDIN compliant metadata for the updated national MCA dataset, incorporating the revised East Marine Plan Area MCAs, and meeting MMO quality/reporting standards; and
- Electronic copies of the reports provided as word files and PDF formats, following MMO template and style guide.

5.12 Task 10: Post-project review meeting

At this final stage, we would hold a final Teams call with the MMO's project team to review and conclude the project. The specification asks for reflection on using a Natural Capital approach. At each stage of the study therefore, we will seek to take stock and understand how Natural Capital approaches could be applied, and how this would affect the Project outcomes.

6. **2. Project Management and Project Plan**

6.1 Project Management and Quality Assurance

We are committed to ensuring that our services fully meet the expectations of our customers and that our work is of the highest standard, ensuring delivery of high-quality outputs during the life of the project. Our Quality Management System has been certified to ISO 9001 since 2011 and we use it to achieve a consistent and predictable high performance.

LUC's Project Management System (PMS) is a key element of the Quality Assurance process. Based on the principles of Prince 2, the PMS involves four main stages which are common to all LUC projects; each stage includes a number of procedures. To ensure our projects are managed to a high standard and importantly to the client's satisfaction, each project is assigned:

- A **Project Director** [REDACTED] who is responsible for understanding customer needs/aims of the project, ensuring methodologies used are appropriate, and for reviewing outputs to ensure they are of high quality and meet client's requirements; and
- A **Project Manager** [REDACTED] typically an Associate, Principal or Senior consultant, who is responsible for implementing our quality management procedures and ensuring the success of the project: delivering on time, budget and the client's satisfaction.

The Project Director has overall responsibility for quality assurance of all outputs at all stages within the project, including evidence gathering, analysis and report writing. The Project Director will take responsibility for the overall evaluation and for integrating the individual tasks into a final report.

Our Project Directors and Project Managers are required to comply fully with our QMS to ensure that work is undertaken to a high standard of quality, including constraints on timescale and budget. For each project, we would agree to meet regularly to review progress, quality, and deliverables. Any issues would be identified and addressed quickly and appropriately. A project risk log is completed (using inputs from the client and team members) at the start of each project and is reviewed throughout the life of the project.

We can confirm that the proposed team is available to work on this project. Should substitution of team members be required, this will be subject to the approval of the MMO.

At all stages of a project, we would seek regular, timely feedback from the client on project progress, as we have a keen focus on effective communication, which is key to the success of our projects. Robust project management will include regular communications between all partners including emails and, as a minimum, twice-monthly teleconferences with key individuals to review progress against objectives, report risks and issues, and to forward plan.

6.2 Clear reporting of management information

We recognise the importance of clear and efficient document storage. Our in-house financial and project management systems store all relevant project information centrally so that it is available to all project managers. There are strict controls over version management and all material is constantly backed-up on safe servers.

6.3 Staffing and workload management

Our work programming system provides sight of each team member's future time commitments on projects. These are discussed at weekly resourcing meetings, enabling peaks of work to be managed effectively across programmes of work. Although we have selected a team appropriate for this commission, there are other capable staff across the company who could step in and deliver the roles necessary, subject to client approval.

These management systems and procedures also provide:

- Information required by project managers to maintain control of project time, costs and delivery of outputs.
- Summary management information to business managers for internal review.
- Summary management information for clients.

6.4 Proposed Timetable

We have set out below a proposed timetable for all tasks. This will be developed and refined in partnership with the MMO as part of the initial planning phase to produce a fully detailed inception plan setting out the agreed sequencing.

7. 3. Project Team and Experience

7.1 Selected Experience

LUC has been working with the MMO since 2012 to undertake seascape assessments region by region, to underpin statutory marine planning. We have also undertaken Seascape Character Assessment at a more local scale, and we have applied these studies in the assessment of development impacts. Our work to examine and understand landscape change also informs this proposal. We have undertaken a number of studies considering past and future landscape change. We have extensive experience in the application of GIS to landscape projects, focussing on monitoring landscape change, in our work with Natural England.

We highlight the following projects as key examples:

- **Seascape Assessment for the South Marine Plan Areas (MMO, 2014):** This study covered the coastline from the River Dart in Devon to Folkestone in Kent, taking in the full extent of the South Inshore and South Offshore marine plan areas. The work helps to inform the MMO's evidence base for marine planning in the South of England, promoting an understanding of both character and visual resource through a strategic-scale classification and description of character areas. An innovative approach to mapping the visual resource of the areas was also developed by our Digital Design Team. The MMO used this work as a template for future Seascape Assessments in other marine plan areas.
- **Future Coastal Landscape Approaches (Natural England, 2022):** Natural England commissioned LUC to undertake research and produce recommendations on the potential for new approaches to coastal landscapes, their designations, and management mechanisms. Recommendations will be informed by desk-based reviews and interviews of a wide range of existing coastal landscape management models and projects, including AONB's, Heritage Coasts, National Parks, as well as non-designated coastal partnerships and organisations. This study is intended to provide analysis for Natural England, and will be explored further in their research to develop new opportunities and policy recommendations for landscape approaches along the coast.
- Our work with **Natural England and Defra** over the last decade to research landscape change and develop monitoring methods, including major research on the impacts of agri-environment schemes on landscape character and quality; our work to identify indicators and thresholds to monitor changes at the NCA level; and projects to develop an interactive NCA **Landscape Change Atlas** hosting a wealth of data in a user-friendly, public-facing format. Our research *New Agricultural Landscapes: 44 Years of Change* was the overall category winner at the 2017 Landscape Institute Awards.

7.2 Balance of the team and value for money

In drawing together our team we are conscious of the need to provide a good balance of expertise involving senior members of the practice as well as providing value for money, by including experienced consultant level staff to undertake more routine tasks under guidance. Our previous experience has made us aware of the challenges of SCA, not least the need for efficient and smart interpretation of 'what matters'. A key component of our team is our highly skilled in-house GIS staff who are skilled at collating, assimilating, and analysing complex data to define meaningful patterns. We are fully aware of the complexities of tasks such as integrating data projections at land and sea and can build on lessons learned from other seascape studies. **Proposed Team Structure**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. 4. Risk

8.1 Risk Assessment and Management

Ongoing assessment of the risks to the successful delivery of the project will be undertaken and updated as the project progresses. Preventative and contingency measures will be identified and resourced where appropriate to help manage risks. An initial risk assessment is shown below; this will be discussed with the MMO and the project team at the inception meeting and expanded upon in the inception report.

Each risk or possible opportunity is evaluated in terms of its likelihood of occurring and the severity of impact it would have on the successful delivery of the project. An owner is assigned to each one, and a management strategy is developed. Utilising this approach to risk assessment will benefit the client by ensuring project risks are known and therefore minimised.

Risk	Severity	Likelihood	Impact on delivery	Strategy to mitigate and avoid
Delay in Contracting	M	M	Impact on the overall project plan, key milestones and time to develop the required outputs	The Project Plan to be discussed at the inception meeting with key milestone dates adjusted where appropriate.
Loss/illness of key staff	M	L	Impact on our ability to meet project milestones and deliver the required outputs.	Weekly workload meetings are held to discuss resourcing in each team, with additional resource being added where necessary. While we have selected a team for this project, we have expertise within LUC beyond the named individuals who could be drawn into the project if extra capacity is needed.
Not completing tasks to timescale	M	L	Delays to the production of final outputs	The close collaboration that the project seeks to facilitate will allow for potential sources of delay to be identified and acted upon early
MMO change of personnel	L	M	Interruptions in project communication and reporting.	Building relationships and understanding allowed for in project reporting timetable.
Client response time in relation to provision of project data and other key information	M	L	Delay and disruption to delivery	Detailed programme to include reporting and comment timing; provide advance notice to the client when feedback/decisions are required.

Difficulties recruiting relevant stakeholders for workshop	M	L	Delays are introduced and approach and quality of feedback/validation obtained may be impacted	Early identification and engagement with key stakeholders. Stakeholders will be identified and contacted as soon as is practical. Utilising preexisting stakeholder contacts and networks at LUC and the MMO.
Scope creep	M	M	Pressure on budget and timescale.	Clarification of key points at inception. Clear roles and responsibilities of the MMO and consultancy team agreed at project outset.
Risk	Severity	Likelihood	Impact on delivery	Strategy to mitigate and avoid
				Project Manager to monitor for scope changes and raise any issues as early as possible to ensure scope remains feasible in terms of budget and capacity.
Delays to field surveying due to adverse winter weather	M	L	Delay to this element of the study could jeopardise the availability of information for other project milestones and outputs especially the stakeholder workshop and analysis of change.	Allow some element of contingency in planning the field surveys when agreeing detailed project plan during inception. Date for the stakeholder workshop to be planned to allow for sufficient contingency time.
Technical issues are encountered during the analysis.	H	L	Delays are introduced.	We have access to external IT support to troubleshoot issues and extend capacity on our remote desktop applications to process large datasets.
Loss of data or project outputs	M	L	Delay to the relevant stage in the study which could in turn threaten the delivery of other project milestones and outputs	Our servers back up all data and files at appropriate intervals.

8.2 IT-related risks

All of our IT assets are encrypted. Our data storage and management is cloud-based, and those services are sub-contracted to our IT services provider (who is ISO 27001-certified). All our physical IT assets have data encryption as standard, and outgoing emails are also encrypted. Virus signatures are updated daily and used to check for infection of incoming emails and attachments. Firewalls are in place both on our data servers and on our website. LUC holds Cyber Essentials Plus accreditation.

8.3 General Data Protection Regulations (GDPR)

We will ensure that surveys collecting or using any data involving protected characteristics complies with the provisions of the Data Protection Act 2018 and General Data Protection Regulation (GDPR) 2018 and that a privacy notice and confidentiality statement will be provided. Defra survey control will be notified and consulted to obtain approval before surveys are undertaken where required. We have procedures described in our data privacy policy – that is available on request- to manage subject access requests, data deletion requests and suspected data breaches. We have contacted our third-party data processors for the necessary information regarding their data privacy arrangements and ensured that we have written contracts with all of them in place. We have fully trained all our staff in the requirements of GDPR and will continue to provide that to new starters and those returning from leave periods and/or sabbaticals, as well as providing refresher training as and when appropriate. Any GDPR-related questions and any data subject requests can be addressed to our Data Privacy Manager Andrew Clarke at database@landuse.co.uk putting 'GDPR' in the subject field.

9. 5. Sustainability

As an environmental consultancy providing planning, impact assessment, landscape design, ecology, and geospatial services to a wide range of clients, we are committed to protecting the environment and determined to achieve sustainable development on behalf of our clients. We are committed to reducing our carbon footprint through reviewing our approach to energy usage, business travel and our facilities management. We pride ourselves on delivering sustainable solutions to our clients. In terms of green procurement, we ensure that our office supplies are from sustainable/ethical sources, and we continue to focus on waste reduction, general waste recycling and minimising resource consumption.

9.1 LUC's Environmental Management System

A robust internal Environmental Management System (EMS) is seen as an appropriate expression of LUC's commitment to continuous improvement in terms of its own environmental performance and the wider sustainability agenda. LUC's EMS was registered to ISO 14001 standard in March 2011 (BSI registration number EMS 566056) and transitioned to the ISO 14001:2015 standard in June 2018. A copy of our ISO 14001 certificate and our Environmental Policy Statement is available on request. Our approach to both projects and the internal operation the company always considers sustainability, quality, and innovation.

LUC's environmental objectives are put into practice through environmental programmes. These are implemented by members of our staff who are 'Environmental Champions'. The objectives, and examples of how they are being implemented are as follows:

- LUC measures its carbon footprint and sets annual targets to reduce its carbon footprint, principally by reduction measures, and beyond this by means of carbon offsetting. Various measures exist to minimise energy consumption within our offices, including the use of low-energy lighting, and a strong office culture of turning off lights, computers and other devices when not required.
- LUC's Transport Policy sets out clear guidelines for travel to ensure the most sustainable methods are sought. Also, by reducing business travel by means of the use of technology and sound travel planning and the minimisation of essential goods and services. **We will ensure this is the case throughout the Seascapes project, using virtual meetings as appropriate and sustainable transport, where possible, for any site visits/surveys.**

- To continue to ensure that office supplies are procured from environmentally and socially sustainable sources and that as far as possible, office waste is recycled.
- Wherever possible, LUC uses recycled paper and other recycled office supplies. We aim to procure all office supplies from sustainable and socially responsible sources – for example we use eco-efficient detergents and washing products and procure fair-trade goods such as tea and coffee. We also aim to reduce the purchasing of single-use plastics throughout the business.
- To communicate this statement to clients and contractors via our website. Our Environmental Policy is communicated to all sub-contractors, who are required to read and agree to the principles contained within it or provide an equivalent policy of their own.
- To apply our bespoke Sustainability Checklist to all projects (above a min. fee level). The checklist records project-specific sustainable alternatives and methods which can be implemented throughout the whole process and at every work stage. As well as encouraging the integration of sustainability measures throughout a project, the Checklist provides an effective tool to record and monitor our sustainability-orientated approach and enables us to act upon the lessons learned to continue to promote and deliver sustainable environmental solutions in the future. **A checklist will be produced for the Seascapes project.**

10. 7. Cost Proposal

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Key Personnel of the Service Provider to be involved in the provision of the Goods, Services and Deliverables

[Redacted]



[Redacted]

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

N/A

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)

A draft template Implementation Plan as at the Commencement Date is set out below:

Guidance contained in this document is intended for use by ESPO employees; however, it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)	Delay Payments
Inception Meeting					
D1: Inception Report	Deliverable 1 (D1): Inception report including an agreed detailed programme of work and project plan (including risks), preferably in MS Project.				
M1: Progress Report	Milestone 1 (M1) Mid-way progress reports relating to completion of the objectives described in this specification. Twice monthly, minuted meetings with the key individuals to review		Halfway point in the project		

	progress against objectives, report risks and issues, and to forward plan.				
D2: Survey Results	D2: Survey results from land-based and possibly boat-based activities.		w/c 22/01/2024		
D3: Stakeholder engagement plan etc.	D3: Stakeholder engagement plans and workshops with sufficient time to incorporate relevant feedback, and field work outputs.		w/c 12/02/2024		
D4: Draft technical reports	D4: Technical reports associated with data gathering exercises. Includes report on understanding changes (described in 3) above).		w/c 04/03/2024		

Guidance contained in this document is intended for use by ESPO employees; however, it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

D5: Draft spatial deliverables	D5: Draft spatial deliverables to MMO requirements		w/c 04/03/2024			
D6: Draft final reports	D6: Draft final report(s) in MS Word to MMO Style template (provided at inception) in plain English.		w/c 11/03/24			
D7: Final spatial deliverables	D7: Final geospatial deliverables to MMO requirements incorporating the comments and recommendations identified at the draft final stage. Key deliverables will include visual resource maps, identification of marine character areas along with characteristics,		w/c 25/03/24			

Guidance contained in this document is intended for use by ESPO employees; however, it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

	descriptions and pictures in an interactive PDF.					
D8: Final reports	D8: Final report(s) incorporating the comments and recommendations identified at the draft final stage.		w/c 25/03/24			

Critical Service Failure

(i) In relation to the required Seascope character assessment for the East Marine Plan areas a Critical Service Failure shall include a delay in servicing the demand for the services by the Customer in excess of 24 hours more than once in any three (3) Month period or more than three times in any rolling twelve (12) month period.

(ii) In relation to the Seascope character assessment for the East Marine Plan areas a Critical Service Failure shall mean a loss of two (2) or more 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.

The default period is three months if less than three months is required then an alternative period should be inserted above.

Monitoring

Twice monthly, minuted meetings with the key individuals to review progress against objectives, report risks and issues, and to forward plan.

Management Information

Management Information to be provided in accordance with clause 7 of the Call-Off Terms. Performance can be reviewed during the twice monthly meetings.

5. CUSTOMER RESPONSIBILITIES

Customer's Responsibilities (where appropriate)

The authority can provide the following support:

- An MMO project team including representatives from MMO Evidence and Evaluation and MMO Marine Planning Teams. The project team can assist in providing internal stakeholder support from GIS and data services or other relevant MMO teams if sufficient notice of requirements is provided to MMO.
- Sector specific support from the marine planning team, including on emerging activities and sectors.
- The project may draw on the MMO's existing network of activity and government contacts for evidence work in support of marine planning and marine spatial prioritisation however this is dependent on availability of individuals if/where they are needed.

Customer's equipment (where appropriate)

There will not be a need for any equipment to be provided to the supplier from the customer.

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 Authority's preference is for all invoices to be sent electronically, quoting a valid Purchase Order Number (PO Number), to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Within 10 Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant with Annex 3 Non-compliant invoices will be sent back to you, which may lead to a delay in payment.

If you have a query regarding an outstanding payment please contact the Authority's Authorised Representative(s).

Payment will be made upon completion based on the authority's satisfaction of each milestone.

7. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information:

Sharing contact details for engagement with stakeholders to join the seascape workshop(s).

Supplier rates/pricing are commercially sensitive, and they would ask them to be redacted in any FOI request. They request the information to be confidential for a year from the contract start date.

8. AGREED AMENDMENTS TO THE CALL-OFF TERMS

N/A

9. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. INTRODUCTION

1.1 The Service Provider 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	East Marine Plan Seascape Character Assessment – stakeholder workshop communication.
Duration of the processing	22/01/2024-30/04/2024
Nature and purposes of the processing	The purpose of the data processing is to support the development of the East Marine Plans which is a statutory obligation for MMO. Contact details will be shared with the Service Provider so they can communicate with stakeholders about a workshop to discuss, agree and get feedback on marine character areas. Feedback is anonymised in the final East Marine Plan Seascape Character Assessment report.
Type of Personal Data	Names, job titles, organisations and email addresses will be shared with the contractor for the purposes of the project.
Categories of Data Subject	Colleagues at other ALBs and local authorities, members of the public.

<p>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.</p>	<p>Personal data will be destroyed by the Service Provider upon completion of the project.</p>	
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10. Personal Data under the Joint Control of the Parties

The following section 10 applies to Personal Data under the Joint Control of the Parties as described in clause 16.8.15 of this Contract.

1. The Parties shall be responsible for the provision of information to Data Subjects as detailed in GDPR Article 13 (Information to be provided where personal data are collected from the data subject).
2. The Parties shall be responsible for the provision of information to Data Subjects as detailed in GDPR Article 14 (Information to be provided where personal data have not been obtained from the data subject).
3. The Parties shall be responsible for responding to any request for information from a Data Subject under GDPR Article 15 (Right of access by the data subject).
4. The Parties shall be responsible for responding to and rectifying any request for rectification from a Data Subject under GDPR Article 16 (Right to rectification).
5. The Parties shall be responsible for responding to and erasing any request for the right to erasure from a Data Subject under GDPR Article 17 (Right to erasure (right to be forgotten)).
6. The Parties shall be responsible for responding to and restricting any request for restriction of processing from a Data Subject under GDPR Article 18 (Right to restriction of processing).
7. The Parties shall be responsible for notifying any rectification or erasure of personal data or restriction of processing carried out in accordance with GDPR Articles 16, 17 and 18 to each recipient to whom the personal data have been disclosed in accordance with GPR Article 19 (Notification obligation regarding rectification or erasure of personal data or restriction of processing).
8. The Parties shall be responsible for responding to and porting any request for data portability from a Data Subject under GDPR Article 20 (Right to data portability).
9. The Parties shall be responsible for responding to and complying with any objection from a Data Subject under GDPR Article 21 (Right to object).
10. The Parties shall be responsible for ensuring a Data Subject is not subject to a decision based solely on automated processing, including profiling which causes legal effects or significant effects on the Data Subject and shall comply with GDPR Article 22 (Automated individual decision-making, including profiling).

11. The Parties shall be responsible for notifying the supervisory authority (Information Commissioners Office) and the Data Subject of any personal data breach in accordance with GDPR Article 33 (Notification of a personal data breach to the supervisory authority) and Article 34 (Communication of a personal data breach to the data subject).

12. Each Party shall maintain a record of its processing activities under its responsibility in accordance with GDPR Article 30 (Records of processing activities).

14. The Parties agree that the Service Provider shall be the point of contact for Data Subjects.

THE CUSTOMER

- and -

THE SERVICE PROVIDER

CALL-OFF TERMS

relating to

CONSULTANCY SERVICES

CONTRACT REF

ESPO 664-21

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 "Service Provider").

WHEREAS

- (A) ESPO selected framework providers, including the Service Provider, to provide Goods and/or Services;
- (B) the Service Provider undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 664-21 dated 1st September 2021 (the "Framework Agreement");
- (C) ESPO and the Service Provider have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Service Provider for the Service Provider 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 Service Provider, its IPR or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Service Provider's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the charges produced by the Service Provider pursuant to schedule 6 of the Framework Agreement;
"Contract"	means the contract entered into by the Customer and the Service Provider 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 Service Provider 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 Service Provider of its obligations under the Contract less any Service Credits;

- "Contracting Authority"** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer;
- "Control"** means control as defined in section 1124 Corporation Tax Act 2010 and "**Controls**" and "**Controlled**" shall be interpreted accordingly;
- "Controller"** shall take the meaning given in the GDPR;
- "Conviction"** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
- "Critical Service Failure"** shall have the meaning given in the Master Contract Schedule and/or any other Contract Document;
- "Customer Data"** means:
- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
 - (i) are supplied to the Service Provider by or on behalf of the Customer; or
 - (ii) the Service Provider is required to generate, process, store or transmit pursuant to the Contract; or
 - (b) any Personal Data for which the Customer is the Data Controller;
- "Customer Pre-Existing IPR"** shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Service Provider 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 Service Provider 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 Service Providers 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 Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Legislation"	means the General Data Protection Regulation ((EU) 2016/679) (GDPR), the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK including the Data Protection Act 2018 and all applicable law about the processing of personal data and privacy;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	shall take the meaning given in the GDPR;
"Data Subject"	shall take the meaning given in the GDPR;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default"	means any breach of the obligations of the Service Provider (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 Service Provider or Service Provider's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Service Provider is liable to the Customer;
"Delay Payments"	means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule and/or any other Contract Document;
"Deliverables"	means those deliverables listed in the Master Contract Schedule and/or any other Contract Document (if any);
"Delivery"	means the time at which the Goods and/or Services have been installed by the Service Provider and the Customer has issued the Service Provider with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 42.2;
"DPA 2018"	means Data Protection Act 2018;
"Employment Checks"	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equality Legislation"	means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;

- "Equipment"** means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods and/or Services;
- "ESPO"** means Leicestershire County Council, acting in its capacity as servicing authority to a joint committee known as ESPO, established under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000, whose place of business is at of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES;
- "Expiry Date"** means the date set out in the Master Contract Schedule and/or any other Contract Document;
- "Form of Contract"** means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Service Provider 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 Service Provider 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 Service Provider, the Service Provider's Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and
 - ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
- "GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);
- "Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
- "Goods and/or Services"** means the goods and/or services to be supplied as specified in the Form of Contract, Master Contract Schedule and/or any other Contract Document;
- "Guarantee Period"** means the period the period for each item as stated in the Service Provider's Tender

- "Holding Company"** shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
- "Implementation Plan"** means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated in accordance with Schedule 2;
- "Information"** has the meaning given under section 84 of the FOIA;
- "Initial Term"** the period commencing on the Commencement Date and ending on the Expiry Date;
- "Intellectual Property Rights" or "IPRs"** means:
- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;
 - b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
 - c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
- means the response submitted by the Service Provider to the Invitation to Tender issued by the Customer on 1st December 2023.
- ITT Response**
- "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 Service Provider'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 Service Provider is bound to comply;
"LED"	means Law Enforcement Directive (Directive (EU) 2016/680);
"Management Information"	means the management information specified in Framework Schedule 7 (Management Information Requirements);
"Master Contract Schedule"	means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement;
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Mirror Framework"	means any framework agreement entered into by the Service Provider and a company owned by ESPO;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Normal Business Hours"	means 8.00 am to 6.00 pm local UK time, each Working Day;
"Parent Company"	means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider;
"Party"	means the Service Provider or the Customer and "Parties" shall mean both of them;
"Personal Data"	shall take the meaning given in the GDPR;
"Personal Data Breach"	shall take the meaning given in the GDPR;
"Premises"	means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document;
"Processor"	shall take the meaning given in the GDPR;

"Prohibited Act"

Means:

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

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

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

b) committing any offence:

i) under the Bribery Act 2010;

ii) under legislation creating offences concerning fraudulent acts;

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

iv) involving slavery or human trafficking; or

c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer or any other contracting body.

"Project Specific IPRs"

means:

(a) IPRs in the Services, Deliverables and/or Goods provided by the Service Provider (or by a third party on behalf of the Service Provider) 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 Service Provider (or by a third party on behalf of the Service Provider) under the Contract,

"Property"

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

"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
"Public Contracts Directive"	means Directive 2014/24/EU of the European Parliament and of the Council;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance;
"Regulated Activity"	means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;
"Related Service Provider"	means any person who provides services to the Customer which are related to the Services from time to time;
"Replacement Service Provider"	any third party Service Provider of Replacement Services appointed by the Customer from time to time;
"Replacement Service"	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Customer internally and/or by any third party;

"Request for Information"	means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Service Credits"	means the sums referred to or sums calculated in accordance with Schedule 1 being payable by the Service Provider in respect of any failure by the Service Provider to meet one or more Service Levels;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to Schedule 1;
"Service Provider"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;
"Service Provider Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
"Service Provider Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Service Provider 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;
"Service Provider's Representative"	means the representative appointed by the Service Provider from time to time in relation to the Contract;
"Service Provider Solution"	means the Service Provider'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;
"Service Provider's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, 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;
"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 Service Provider manages, organises or otherwise directs the provision or the use of the Services;
"Specification"	means the specification in the Lots at Framework Schedule 1 (Goods and/or Services);
"Staff"	means all persons employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, Service Providers 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 Service Provider and any third party whereby that third party agrees to provide to the Service Provider 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 Service Provider 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 Service Provider related to this Contract;
"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 Service Provider to the Customer in response to the Customer's invitation to Service Providers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;
"Term"	the period of the Initial Term as may be varied by: (a) any extensions to this Contract which are agreed pursuant to clause 3; or (b) the earlier termination of this Contract in accordance with its terms;
"TFEU"	means the Treaty on the Functioning of the European Union (OJ No. C 115);

"Transferring Goods"	means goods comprised in the Goods and/or Services, title to which transfers between the Parties in accordance with clause 4.6.1;
"Treaties"	means the Treaty of the European Union (OJ No. C 115) and TFEU;
"Undelivered Goods and/or Services "	shall have the meaning given in clause 4.5.7;
"Valid Invoice"	means an invoice issued by the Service Provider to the Customer that complies with clause 11.2.2;
"Variation"	has the meaning given to it in clause 33;
"Variation Procedure"	means the procedure set out in clause 33;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 the schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;
- 1.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "clauses" and "schedules" are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Master Contract Schedule, these Call-Off Terms, any other Contract Document any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.11.1 the Framework Agreement;
 - 1.2.11.2 these Call-Off Terms;
 - 1.2.11.3 the Master Contract Schedule; and
 - 1.2.11.4 any other Contract Document or document referred to in these Call-Off Terms.

2. DUE DILIGENCE

- 2.1 The Service Provider 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 Service Provider three (3) months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.3 If the Customer gives such notice then the Term shall be extended by the period set out in the notice.
- 3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 20 shall apply.

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

- 4.1.1 The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan.
- 4.1.2 The Service Provider shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Service Provider supplies the Goods and/or Services at the Premises during Normal Business Hours on reasonable notice.
- 4.1.3 If the Customer informs the Service Provider 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 Service Provider 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 Service Provider accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:
 - 4.1.4.1 the same is notified in writing to the Service Provider 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 Service Provider's instructions.

- 4.1.5 Where the Service Provider 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 Service Provider's reasonable satisfaction, to have been lost or damaged in transit.
- 4.1.6 The Service Provider agrees that the Customer relies on the skill and judgment of the Service Provider 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 Service Provider shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 4.2.2 The Service Provider 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 Service Provider'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 Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Service Provider 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 Service Provider's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Service Provider.
- 4.2.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5 The Service Provider 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 Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider 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 Service Provider or Service Provider's Staff.

4.3 Quality

- 4.3.1 The Service Provider 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 Service Provider 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 Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 4.3.2 The Service Provider 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, diligence and are appropriately experienced, qualified and trained.
- 4.3.3 The Service Provider shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.
- 4.3.4 The Service Provider 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 Service Provider 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 Service Provider by the Customer; and
- 4.3.5.5 the Goods and/or Services are supplied in accordance with the Service Provider Solution.

4.4 Delivery (Goods only)

- 4.4.1 Without prejudice to the content of clause 4.5 (Delivery) the Service Provider 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 Service Provider.
- 4.4.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to an order.
- 4.4.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

4.5 Delivery

- 4.5.1 The Service Provider 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 Service Provider 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 Service Provider, 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 and/or Services by the Staff or the Service Provider's Service Providers 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 Service Provider 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 Service Provider for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Service Provider.

4.6 **Ownership and Risk**

- 4.6.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to an order.
- 4.6.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

4.7 **Guarantee**

The Service Provider 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 Service Provider of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

5. ASSISTANCE ON EXPIRY OR TERMINATION

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

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

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

7.2 Where requested by the Customer, the Service Provider 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 Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

8.2 The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Service Provider's own employees or others, which affects or might affect the Service Provider's ability at any time to perform its obligations under the Contract.

8.3 In the event of industrial action by the Staff, the Service Provider 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 Service Provider'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 Service Provider 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 Service Provider as a direct result of such disruption.

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

- 9.1 The Service Provider shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of schedule 1 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Service Provider.
- 9.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider'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 Service Provider 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 Service Provider the opportunity at the Service Provider'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 Service Provider to remove the Goods (in whole or in part) at the risk and cost of the Service Provider on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Service Provider;
 - 9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;
 - 9.3.4 if the Master Contract Schedule and/or any other Contract Documents provide for the payment of Delay Payments, then the Service Provider shall pay such amounts (calculated in accordance with the Master Contract Schedule and/or any other Contract Document) on demand. The Delay Payments will accrue on a daily basis from the relevant

Milestone Date and will continue to accrue until the date when the Milestone is met;

- 9.3.5 carry out at the Service Provider's expense any work necessary to make the Goods and/or Services comply with the Contract;
- 9.3.6 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;
- 9.3.7 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services; and/or
- 9.3.8 charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

9.4 In the event that the Service Provider:

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

the Customer may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

10. PAYMENT AND CONTRACT CHARGES

10.1 Contract Charges

- 10.1.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).
- 10.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.

- 10.1.3 If at any time during the Contract Period the Service Provider 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 Service Provider shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.
- 10.1.4 The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement which is specifically commissioned from the Service Provider by another contracting body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and/or Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.
- 10.1.5 The Parties acknowledge that the Service Provider is required to pay to ESPO and, where relevant, the Trading Company a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

10.2 **Payment and VAT**

- 10.2.1 Where the Service Provider submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.
- 10.2.2 The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice. The Customer shall accept and process for payment an electronic invoice submitted for payment by the Service Provider where the invoice is undisputed and where it complies with the following standard on electronic invoicing: the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 10.2.3 The Customer shall pay the Service Provider 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.
- 10.2.4 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.
- 10.2.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

- (a) provisions having the same effect as clauses 11.2.1 – 11.2.3 of this Contract; and
- (b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 11.1.1 – 11.1.4 of this Contract.

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

- 10.2.6 The Service Provider 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 Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause 11.2.6 shall be paid by the Service Provider 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.
- 10.2.7 The Service Provider shall not suspend the supply of the Services and/or Goods (as applicable) unless the Service Provider is entitled to terminate the Contract under clause 26 (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.

10.3 Recovery of Sums Due

- 10.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider 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 Service Provider under the Contract or under any other agreement or contract with the Customer.
- 10.3.2 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.
- 10.3.3 The Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.

10.3.4 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.

10.4 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 Service Provider 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 Service Provider.

11. KEY PERSONNEL

11.1 The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.

11.2 The Service Provider shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.

11.3 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 Service Provider or Sub-Contractor.

11.4 The Service Provider 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 Service Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as 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.

11.5 The Customer may also require the Service Provider 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.

12. SERVICE PROVIDER'S STAFF

12.1 The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

12.1.1 any member of the Staff; or

12.1.2 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.

- 12.2 At the Customer's written request, the Service Provider 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.
- 12.3 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.
- 12.4 If the Service Provider 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.
- 12.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider 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 Service Provider's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups Act 2006 and will notify the Customer immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Customer.
- 13.10 Where the provision of the Goods and/or Services does not require any of the Service Provider's employees or volunteers to work in a Regulated Activity but where the Service Provider's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider 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 Service Provider 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 Service Provider nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Service Provider 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.

13. STAFFING SECURITY

13.1 The Service Provider shall comply with the Customer's staff vetting procedures (where provided to the Service Provider) in respect of all Service Provider Staff employed or engaged in the provision of the Goods and/or Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider 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.

13.2 The Service Provider 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.

14. INTELLECTUAL PROPERTY RIGHTS

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

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

14.3 With respect to the Service Providers obligations under the Contract, the Service Provider warrants and represents that:

14.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;

14.3.2 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;

- 14.4 The Service Provider 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:
- 14.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
 - 14.4.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 14.5 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider 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 Service Provider's responsibilities and obligations hereunder.
- 14.6 If a claim or demand is made or action brought to which clause 16.3 and/or 16.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
- 14.6.1 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
 - 14.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and
 - 14.6.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 14.7 **Customer Data**
- 14.7.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
 - 14.7.2 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise expressly Approved by the Customer.

- 14.7.3 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider 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.
- 14.7.4 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 14.7.5 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.
- 14.7.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer may:
 - 14.7.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 14.7.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.
- 14.7.7 If at any time the Service Provider 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 Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.

14.8 **Protection of Personal Data**

- 14.8.1 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 Service Provider to perform, the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be determined by the Service Provider.

- 14.8.2 The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 14.8.3 The Service Provider 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:
 - 14.8.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 14.8.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Goods and/or Services;
 - 14.8.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 14.8.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 14.8.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 14.8.4.1 process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 14.8.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (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;
 - 14.8.4.3 ensure that:
 - (v) the Service Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular section 9 of the Master Contract Schedule);

- (vi) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel (including any sub-processors or third-party processors) who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Service Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Service Provider 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

14.8.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (i) (the Customer or the Service Provider 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 Service Provider 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 Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and

14.8.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of this Contract unless the Service Provider is required by Law to retain the Personal Data.

14.8.5 Subject to clause 16.8.6, the Service Provider shall notify the Customer immediately if it:

- 14.8.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 14.8.5.2 receives a request to rectify, block or erase any Personal Data;
 - 14.8.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 14.8.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 14.8.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 14.8.5.6 becomes aware of a Data Loss Event.
- 14.8.6 The Service Provider's obligation to notify under clause 16.8.5 shall include the provision of further information to the Customer in phases, as details become available.
- 14.8.7 Taking into account the nature of all processing, the Service Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 16.8.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 14.8.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 14.8.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 14.8.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 14.8.7.4 assistance as requested by the Customer following any Data Loss Event;
 - 14.8.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

- 14.8.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- 14.8.8.1 the Customer determines that the processing is not occasional;
 - 14.8.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 14.8.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.8.9 The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 14.8.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 14.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
- 14.8.11.1 notify the Customer in writing of the intended Sub-processor and processing;
 - 14.8.11.2 obtain the written consent of the Customer;
 - 14.8.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16.8 such that they apply to the Sub-processor; and
 - 14.8.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 14.8.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 14.8.13 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).
- 14.8.14 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 Service Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

14.9 Security of Premises

- 14.9.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Service Provider 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.
- 14.9.2 The Customer shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

14.10 Confidentiality

- 14.10.1 Except to the extent set out in this clause 16.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 14.10.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 14.10.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 14.10.2 Clause 16.10.1 shall not apply to the extent that:
- 14.10.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 19.11 (Freedom of Information);
 - 14.10.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 14.10.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 14.10.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 14.10.2.5 it is independently developed without access to the other Party's Confidential Information.
- 14.10.3 The Service Provider 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.

- 14.10.4 The Service Provider 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.
- 14.10.5 At the written request of the Customer, the Service Provider 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.
- 14.10.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider 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 Service Provider 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 Service Provider 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.
- 14.10.7 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider's Confidential Information (including the Management Information obtained under clause 7.2):
- 14.10.7.1 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;
 - 14.10.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
 - 14.10.7.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 14.10.7.4 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.

- 14.10.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 16.10.7 is made aware of the Customer's obligations of confidentiality.
- 14.10.9 Nothing in this clause 16.10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 14.10.10 In the event that the Service Provider fails to comply with clause 16.10.1 to clause 16.10.6, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.
- 14.10.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

14.11 Freedom of Information

- 14.11.1 The Service Provider 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.
- 14.11.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 14.11.2.1 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;
 - 14.11.2.2 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
 - 14.11.2.3 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.
- 14.11.3 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.

14.11.4 In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Customer.

14.11.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 16.10) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and/or Services:

14.11.5.1 in certain circumstances without consulting the Service Provider; or

14.11.5.2 following consultation with the Service Provider and having taken their views into account,

provided always that where clause 16.11.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

14.11.6 The Service Provider 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.

14.11.7 The Service Provider acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 16.11.5.

14.12 Transparency

14.12.1 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.

14.12.2 Notwithstanding any other term of the Contract, the Service Provider 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.

- 14.12.3 The Customer may consult with the Service Provider to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 14.12.4 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

15. WARRANTIES AND REPRESENTATIONS

15.1 The Service Provider warrants, represents and undertakes to the Customer that:

- 15.1.1 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;
- 15.1.2 the Contract is executed by a duly authorised representative of the Service Provider;
- 15.1.3 in entering the Contract it has not committed any Fraud;
- 15.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 15.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 15.1.6 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;
- 15.1.7 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;
- 15.1.8 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;
- 15.1.9 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 Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

- 15.1.10 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;
- 15.1.11 at the Commencement Date it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
- 15.1.12 at the Commencement Date it has not: (1) communicated to any person other than the Customer the amount or approximate amount of the proposed price tendered in any Further Competition Procedure, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender; (2) entered into any agreement or arrangement with any person that it shall refrain from tendering or as to the amount of any tender submitted in any Further Competition Procedure; or (3) offered to pay or give or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to the proposed price tendered in any Further Competition Procedure any act or thing of the sort described in this clause 17.1.12. In the context of this clause 17.1.12 the word 'person' includes any persons and any body or association, corporate or unincorporated; and 'any agreement or arrangement' includes any such transaction, formal or informal, and whether legally binding or not.

15.2 The Service Provider warrants represents and undertakes to the Customer that:

- 15.2.1 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;
- 15.2.2 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;
- 15.2.3 the Goods and/or Services are and will continue to be during the Contract Period:
 - 15.2.3.1 of satisfactory quality; and

- 15.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer's specifications and documentation;
- 15.2.4 in the three (3) Years prior to the Commencement Date:
 - 15.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - 15.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - 15.2.4.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract; and
 - 15.2.4.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.
- 15.3 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 Service Provider.
- 15.4 The Service Provider acknowledges and agrees that:
 - 15.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and
 - 15.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

16. LIABILITIES

16.1 Liability

- 16.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
 - 16.1.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 16.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;

- 16.1.1.3 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;
 - 16.1.1.4 any claim under clause 15.1;
 - 16.1.1.5 any claim under the indemnity in clauses 11.2.6, 14, 16.4, in respect of a breach of clause 16.10; or
 - 16.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 16.1.2 Subject to clause 18.1.4 and clause 18.1.5 the Service Provider 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 Service Provider of its obligations under the Contract or the presence of the Service Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly by any act or omission of the Service Provider.
- 16.1.3 The Service Provider 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.
- 16.1.4 Subject always to clause 18.1.1 and clause 18.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
- 16.1.4.1 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
 - 16.1.4.2 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).
- 16.1.5 Subject to clause 18.1.1, in no event shall either Party be liable to the other for any:
- 16.1.5.1 loss of profits;
 - 16.1.5.2 loss of business;
 - 16.1.5.3 loss of revenue;

- 16.1.5.4 loss of or damage to goodwill;
 - 16.1.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 16.1.5.6 any indirect, special or consequential loss or damage.
- 16.1.6 The provisions of 18.1.1 shall not be taken as limiting the right of the Customer to recover as a direct loss:
- 16.1.6.1 any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - 16.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default;
 - 16.1.6.3 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 Service Provider; and
 - 16.1.6.4 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 Service Provider.
- 16.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider 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.

16.2 Insurance

- 16.2.1 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the Contract Period.
- 16.2.2 The Service Provider shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for any one occurrence.
- 16.2.3 The Service Provider shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract

from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for any one occurrence.

- 16.2.4 The Service Provider 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 any one claim and in the aggregate, 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.
- 16.2.5 The Service Provider shall effect and maintain a cyber liability 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 any one claim and in the aggregate 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 cyber liability insurance during the Contract Period.
- 16.2.6 The Service Provider 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.
- 16.2.7 If, for whatever reason, the Service Provider 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 Service Provider.
- 16.2.8 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause 18.
- 16.2.9 The Service Provider 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 Service Provider 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.

16.3 Taxation, National Insurance and Employment Liability

- 16.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider 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.

17. TERMINATION

17.1 Termination on insolvency

- 17.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Service Provider where the Service Provider is a company and in respect of the Service Provider:
- 17.1.1.1 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
 - 17.1.1.2 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
 - 17.1.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 17.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 17.1.1.5 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
 - 17.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or

- 17.1.1.7 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
 - 17.1.1.8 any event similar to those listed in clause 19.1.1.1 to 19.1.1.7 occurs under the law of any other jurisdiction.
- 17.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
- 17.1.2.1 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 Service Provider's creditors; or
 - 17.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or
 - 17.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 17.1.2.4 the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
 - 17.1.2.5 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 Service Provider's assets and such attachment or process is not discharged within 14 days; or
 - 17.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - 17.1.2.7 the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

17.2 Termination on Change of Control

- 17.2.1 The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may

terminate the Contract by notice in writing with immediate effect within six months of:

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

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

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

For the purposes of clause 19.2.1 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

17.3 Termination on Default

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

17.3.1.1 the Service Provider 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

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

17.3.1.3 the Default is a material breach of the Contract; or

17.3.1.4 the Default concerns the Service Provider's obligations under this Contract in relation to the Modern Slavery Act 2015.

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

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

17.4 Termination of Framework Agreement

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

17.5 Termination on Financial Standing

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider (as measured from the Commencement Date) which:

- 17.5.1 adversely impacts on the Service Provider's ability to supply the Goods and/or Services under this Contract; or
- 17.5.2 could reasonably be expected to have an adverse impact on the Service Providers ability to supply the Goods and/or Services under this Contract.

17.6 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Service Provider commits a Default of clauses 26.1 to 26.5 or clause 26.7 (Records and Audit Access).

17.7 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in Schedule 6 of the Framework Agreement (Value for Money).

17.8 Partial Termination

If the Customer is entitled to terminate this Contract pursuant to this clause 19, it may (at its sole discretion) terminate all or part of this Contract.

19.9 Termination in compliance with Public Contracts Regulations 2015

The Customer may terminate Contracts where:

- 19.9.1 the Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;
- 19.9.2 the Service Provider has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or

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

19.11 Termination on termination of the Mirror Framework

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

18. CONSEQUENCES OF EXPIRY OR TERMINATION

- 18.1 Where the Customer terminates the Contract under clauses 19.3 (Termination on Default), 19.6 (Financial Standing), 19.7 (Audit), 19.8 (Benchmarking) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 19.3, 19.6, 19.7 and 19.8, no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.
- 18.2 On the termination of the Contract for any reason, the Service Provider shall:
- 18.2.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;
 - 18.2.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Service Provider 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 Service Provider;
 - 18.2.3 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.
 - 18.2.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 4.2. Such property shall be handed back to the

Customer in good working order (allowance shall be made for reasonable wear and tear);

- 18.2.5 transfer to the Customer and/or the Replacement Service Provider (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Service Provider and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Service Provider in respect of such Licensed Goods and/or contracts and/or any other items of relevance;
 - 18.2.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or provide all such assistance and co-operation as the Customer may reasonably require;
 - 18.2.7 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
 - 18.2.8 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 Service Provider to conduct due diligence.
- 18.3 If the Service Provider fails to comply with clause 20.4.1 and 20.4.8, the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted agents or Sub-Contractors where any such items may be held.
- 18.4 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 20.4.5 and 20.4.8 free of charge. Otherwise, the Customer shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.
- 18.5 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.
- 18.6 Save as otherwise expressly provided in the Contract:
- 18.6.1 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

18.6.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 16 (Intellectual Property Rights), 16.8 (Protection of Personal Data), 16.10 (Confidentiality), 16.11 (Freedom of Information), 18 (Liabilities), 20 (Consequences of Expiry or Termination), 25 (Prevention of Bribery and Corruption), 26 (Records and Audit Access), 27 (Prevention of Fraud), 31 (Cumulative Remedies), 37 (Conflicts of Interest), 39 (The Contracts (Rights of Third parties) Act 1999) and 42.1 (Governing Law and Jurisdiction).

19. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 19.1 The Service Provider 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, Service Providers, professional advisors and consultants comply with this clause 19. Any such press announcements or publicity proposed under this clause 21.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 19.2 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.
- 19.3 The Service Provider 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.

20. ANTI-DISCRIMINATION

- 20.1 The Service Provider 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.
- 20.2 The Service Provider shall take all reasonable steps to secure the observance of clause 23.1 by all Staff employed in performance of this Contract.
- 20.3 The Service Provider shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other law, enactment, order or regulation.
- 20.4 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 Service Provider's performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings

as required and permit the Service Provider's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider'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.

- 20.5 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 Service Provider, its agents or Sub-Contractors, or the Service Provider's Staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider 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.
- 20.6 The Service Provider 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.
- 20.7 The Service Provider 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 Service Provider 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 Service Provider 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.

21. HEALTH AND SAFETY

- 21.1 The Service Provider 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 Service Provider of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 21.2 While on the Customer's Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 21.3 The Service Provider 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.
- 21.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other

persons working on the Premises in the supply of the Goods and/or Services under the Contract.

- 21.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Customer on request.

22. ENVIRONMENTAL REQUIREMENTS

- 24.1 The Service Provider 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.

23. PREVENTION OF BRIBERY AND CORRUPTION

- 23.1 The Service Provider shall not:

23.1.1 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;

23.1.2 engage in and shall procure that all Service Provider's Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider'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

23.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

- 23.2 The Service Provider warrants, represents and undertakes that it has not:

23.2.1 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

23.2.2 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;

- 23.3 The Service Provider shall:

- 23.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;
 - 23.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 25;
 - 23.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 25 and the Service Provider shall co-operate with any investigation and allow the Customer to audit Service Provider's books, records and any other relevant documentation in connection with the breach;
 - 23.3.4 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 Service Provider and all persons associated with it or other persons who are supplying the Goods and/or Services in connection with this Contract compliance with this clause 25. The Service Provider shall provide such supporting evidence of compliance as the Customer may reasonably request;
 - 23.3.5 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 Service Provider's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 23.4 If the Service Provider, its Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:
- 23.4.1 this clause 25; or
 - 23.4.2 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.
- 23.5 Without prejudice to its other rights and remedies under this clause 25, the Customer shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from and against:
- 23.5.1 the amount of value of any such gift, consideration or commission; and
 - 23.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 25.

24. RECORDS AND AUDIT ACCESS

- 24.1 The Service Provider shall keep and maintain for six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and/or Services provided under it, the amounts paid by the Customer and records to trace the supply chain of all Goods and/or Services provided to the Customer in connection with this Contract.
- 24.2 The Service Provider shall keep the records and accounts referred to in clause 26.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 24.3 The Service Provider shall afford the Customer and the Auditors access to the records and accounts referred to in clause 26.2 at the Service Provider's premises and/or provide copies of such records and accounts and/or permit Auditors to meet the Service Provider's Staff, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
- 24.3.1 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 Service Provider (including Sub-Contractors) of the Services;
 - 24.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Service Provider;
 - 24.3.3 to review the Service Provider's compliance with the DPA in accordance with this Contract and any other Laws;
 - 24.3.4 to review the Service Provider's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;
 - 24.3.5 to review the Service Provider's compliance with its security obligations set out in clause 16;
 - 24.3.6 to review any books of account kept by the Service Provider in connection with the provision of the Service;
 - 24.3.7 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;
 - 24.3.8 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

- 24.3.9 to ensure that the Service Provider is complying with its obligations under this Contract, including but not limited to its obligations thereunder relating to the Modern Slavery Act 2015.
- 24.4 The Service Provider 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.
- 24.5 The Service Provider shall provide such records and accounts (together with copies of the Service Provider'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.
- 24.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services or supply of Goods save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 24.7 Subject to the Service Provider's rights in respect of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:
- 24.7.1 all reasonable information requested by the Customer within the scope of the audit;
- 24.7.2 reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Goods and/or Services; and
- 24.7.3 access to the Staff.
- 24.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

25. PREVENTION OF FRAUD

- 25.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 25.2 The Service Provider 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 Service Provider or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

25.3 If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:

25.3.1 terminate the Contract with immediate effect by giving the Service Provider notice in writing; and/or

25.3.2 recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 27 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

26. TRANSFER AND SUB-CONTRACTING

26.1 The Service Provider shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval.

26.2 The Service Provider shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this clause 28, the Service Provider 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.

27. FORCE MAJEURE

27.1 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.

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

27.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 29.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

- 27.4 If an event of Force Majeure event affects the Services, the Customer may direct the Service Provider to procure those Goods and/or Services from a third party Service Provider in which case the Service Provider will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 27.5 The Service Provider will not have the right to any payment from the Customer under this Contract where the Service Provider is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Service Provider to use a replacement Service Provider pursuant to sub-clause 29.4, then the Customer will pay the Service Provider (a) the Contract Price; and (b) the difference between the Contract Price and the new Service Provider's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Service Provider's costs are greater than the Contract Price.

28. WAIVER

- 28.1 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.
- 28.2 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 38 (Notices).
- 28.3 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.

29. CUMULATIVE REMEDIES

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.

30. FURTHER ASSURANCES

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.

31. VARIATION

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

32. SEVERABILITY

- 32.1 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.
- 32.2 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 Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

33. MISTAKES IN INFORMATION

- 35.1 The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Service Provider 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.

34. SERVICE PROVIDER'S STATUS

- 36.1 At all times during the Contract Period the Service Provider 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.

35. CONFLICTS OF INTEREST

- 35.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider 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 Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.
- 35.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 37.1 above arises or is reasonably foreseeable.
- 35.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider 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 Service Provider 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.

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

36. ENTIRE AGREEMENT

36.1 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.

36.2 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.

36.3 The Service Provider acknowledges that it has:

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

36.3.2 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.

36.4 Nothing in clauses 38.1 and 38.2 shall operate to exclude Fraud or fraudulent misrepresentation.

36.5 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.

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

37.1 A person who is not a Party to the Contract except ESPO or, as appropriate, the Trading Company in relation to its right to claim retrospective rebate from the Service Provider 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.

37.2 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.

38. NOTICES

38.1 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.

- 38.2 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 38.3. 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.
- 38.3 For the purposes of clause 40.2, the address, email address of each Party shall be the address and email address set out in the Master Contract Schedule and/or any other Contract Document.
- 38.4 Either Party may change its address for service by serving a notice in accordance with this clause.

39. LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

- 41.1 The Service Provider 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.

40. DISPUTES AND LAW

40.1 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.

40.2 Dispute Resolution

- 40.2.1 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 Service Provider's Representative.
- 40.2.2 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.

- 40.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 42.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 42.2.5 unless:
- 40.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 40.2.3.2 the Service Provider does not agree to mediation.
- 40.2.4 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 Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 40.2.5 The procedure for mediation is as follows:
- 40.2.5.1 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;
- 40.2.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider appointed by CEDR to provide guidance on a suitable procedure;
- 40.2.5.3 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;
- 40.2.5.4 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;
- 40.2.5.5 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

40.2.5.6 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 AND SERVICE CREDITS (where appropriate)

1. SCOPE

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

Part A: Service Levels;

Appendix to Part A - Service Levels and Service Credits; and

Part B: Performance Monitoring.

PART A

SERVICE LEVELS

2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels and Service Credits 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 Service Provider's failure to deliver the level of Service for which it has contracted to deliver; and
- 2.1.3 incentivise the Service Provider to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

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 Service Provider 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 Service Provider 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 19.3

Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

APPENDIX TO PART A

SERVICE LEVELS AND SEVERITY LEVELS

N/A

		Level achieved			
Service Level		60-70%	71-90%	91-95%	96-100%
1.					
2.					
3.					
4.					

The Service Credits shall be calculated on the basis of the following formula and worked example:

Formula - 100% - % of Service Level achieved = x% of the Contract Charges to be deducted from the next invoice payable by the Customer.

Worked example - 100% (e.g. Service Level requirement for data accuracy) - 75% (e.g. accuracy of data) = 25% of the Contract Charges to be deducted from the next invoice payable by the Customer

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 Service Provider is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Service Provider and/or delivery of the Services ("**Performance Monitoring System**").
- 1.2 Within 20 Working Days of the Commencement Date the Service Provider 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 Service Provider 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;
 - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 3.1.6 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 Service Provider 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 Service Provider;
 - 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 Service Provider's Representative and the Customer's Representative; and
 - 3.2.4 be fully minuted by the Service Provider. The prepared minutes will be circulated by the Service Provider 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 Service Provider'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 Service Provider 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 Service Provider and the calculations of the amount of Service Credits for any specified period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Service Provider, the Customer may undertake satisfaction surveys in respect of the Service Provider's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Service Provider 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 paragraph 3 of schedule 6 of the Framework Agreement.

SCHEDULE 2

IMPLEMENTATION PLAN AND MILESTONES

1. IMPLEMENTATION PLAN

- 1.1 The Service Provider 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 Service Provider 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 Service Provider shall ensure that each version of the Implementation Plan is subject to Approval. The Service Provider 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 Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.

2. MILESTONES

- 2.1 The Service Provider 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 Service Provider 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 Service Provider'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 Service Provider 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 Service Provider with confirmation in writing of its satisfaction that the Milestone has been met.
- 2.4 No payment or concession to the Service Provider 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.

ANNEX 1 – SPECIFICATION

INVITATION TO SUBMIT PROPOSAL FOR THE MARINE MANAGEMENT ORGANISATION (MMO) MMO1369 East Seascape 2023



1. Project Aim

This project aims to provide an updated robust seascape character assessment for the East Marine Plan, building on the defined 'Approach to seascape characterisation' developed by Natural England for marine plan areas.

2. Background

The UK [Marine Policy Statement](#) (MPS) states that in the development of marine plans, marine plan authorities should consider visual, cultural, historical and archaeological impacts for all coastal areas at a strategic level and any wider social and economic impacts of developments on seascape should also be considered (section 2.6.5.2, p. 21). The MPS also states that "*references to seascape should be taken as meaning landscapes with views of the coast or seas, and coasts and the adjacent marine environment with cultural, historical and archaeological links with each other*". Seascape can therefore be considered an umbrella term that covers both the visual resource and marine character.

There are two complementary and linked elements in this seascape assessment: (1) a character assessment; and (2) a visual resource mapping (VRM) element. A third requirement is (3) to analyse change in the East Marine Plan areas seascape since the last assessment was carried out over 10 years ago. The outputs will assist the MMO in the preparation of policy for new East Marine Plans which will replace the plans published in 2012 and amended in 2014.

1. Rerun of the East Marine Plan Areas Character Assessment

To characterise marine areas, Natural England developed a methodology which has been applied to all previous character assessments for marine plan areas. The method for carrying out the assessment can be found [here](#) ([report NECR106 Edition 1](#)); a high-level flow diagram of the methodology is available in Appendix 3 of the main report.

The Natural England methodology describes the collection of baseline data through:

- A desk-based study consisting of updated GIS mapping including:
 - Ecologically significant flora and fauna in the east marine plan areas
 - Cultural heritage assets
 - The interrelationship between land and sea
- A field study including:
 - Consideration of land-based locations in the first instance
 - Additional boat surveys, depending on scope, that build on the lessons learned described in the South Seascape Character Assessment [here](#) (p.16) and in other marine plan areas discussed in [MMO1134](#).
- Classification and description of characters which includes containing explanatory text for evaluation and baselining purposes within the GIS layers.
 - A contiguous GIS layer should be provided in the outputs.
- Stakeholder consultation
 - To validate the character assessment (see the South Seascape Assessment example).

2. Visual resource mapping (VRM)

VRM that informs the 'perceptual and aesthetic' theme of the seascape wheel as relevant to visual character has already been carried out for the entire English coastline and as such is not within the scope of work.

3. Understanding change

The changing context of the east marine plan areas is essential to understanding spatial prioritisation and the achievement of national priorities in the plan areas. To support MMO's understanding of how marine plan policies are performing, the following is required:

- a. A description of the changes since the last character assessment.
- b. Analysis to determine why changes have occurred.
- c. The role of MMO in controlling changes.
- d. Implications for the vision for the east marine plan area. East Inshore and East Offshore Marine Plans (publishing.service.gov.uk)

Consideration will need to be given to how the previous seascape characterisation was carried out in terms of how/whether it differs from this assessment.

3. Objectives

- Building on Natural England's 'Approach to Seascape Characterisation' as described above, produce an updated character assessment for the east inshore and east offshore marine plan areas including collation of GIS files (including maps and data compatible with ESRI ArcPro 3) and [MEDIN compliant metadata](#).
- Gather information required to complete a comprehensive desk study informed by existing datasets (spatial and non-spatial) and information not currently available to complete the character assessment.
- Prepare a comprehensive field study including stakeholder engagement within the available timescale to develop a robust seascape character assessment of the east marine plan areas to validate, refine and agree the combined seascape character assessment.
- Carry out a VRM exercise for the areas.
- Agree a methodology to analyse the change to the seascape since the last assessment in 2012/2014 and carry out the analysis.
- Create a single, contiguous GIS data layer for England, updating the existing layer with new outputs from new character areas. Project products are to be incorporated into the national marine character zone data layer. The cross-boundary nature of character areas should be considered.
- Following the delivery of final products, discuss with MMO how a natural capital approach to a seascape character assessment would change the approach taken by the consultant.

4. Project Support

The authority can provide the following support:

- An MMO project team including representatives from MMO Evidence and Evaluation and MMO Marine Planning Teams. The project team can assist in providing internal stakeholder support from GIS and data services or other relevant MMO teams if sufficient notice of requirements is provided to MMO.
- Sector specific support from the marine planning team, including on emerging activities and sectors.
- The project may draw on the MMO's existing network of activity and government contacts for evidence work in support of marine planning and marine spatial prioritisation however this is dependent on availability of individuals if/where they are needed.

5. Requirements

Any spatial product(s) are to be compatible with ESRI ArcPro 3 to MMO Style template (provided at inception) with associated metadata, intermediary data products, code or models developed, INSPIRE and MEDIN compliant.

6. Deliverables and milestones

- Deliverable 1 (D1): Inception report including an agreed detailed programme of work and project plan (including risks), preferably in MS Project.
- Milestone 1 (M1) Mid-way progress reports relating to completion of the objectives described in this specification.

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- Twice monthly, minuted meetings with the key individuals to review progress against objectives, report risks and issues, and to forward plan.
- D2: Survey results from land-based and possibly boat-based activities.
- D3: Stakeholder engagement plans and workshops with sufficient time to incorporate relevant feedback, and field work outputs.
- D4: Technical reports associated with data gathering exercises. Includes report on understanding changes (described in 3) above).
- D5: Draft spatial deliverables to MMO requirements
- D6: Draft final report(s) in MS Word to MMO Style template (provided at inception) in plain English.
- D7: Final geospatial deliverables to MMO requirements incorporating the comments and recommendations identified at the draft final stage. Key deliverables will include visual resource maps, identification of marine character areas along with characteristics, descriptions and pictures in an interactive PDF.
- D8: Final report(s) incorporating the comments and recommendations identified at the draft final stage.

Other deliverables may be statistical code or programmes, webinars, databases, raw data, survey returns etc.

7. Timetable

The below are estimates and it is expected that the contractor review and adjust the dates based on their experience of carrying out seascape character assessments.

If the project cannot be delivered in FY23/24, supporting reasoning should be provided.

Deliverable / Milestone	Dates
Inception meeting	w/c 13/11/2023
D1: Inception report	24/11/2023
M1 Progress report	Halfway point in the project
D2: Survey results	w/c 22/01/2024
D3: Stakeholder engagement plan etc.	w/c 12/02/2024
D4: Draft technical reports	w/c 04/03/2024
D5: Draft spatial deliverables	w/c 04/03/2024
D6: Draft final reports	w/c 11/03/24
D7: Final spatial deliverables	w/c 25/03/24
D8: Final reports	w/c 25/03/24

8. Quality Assurance

It is essential that any evidence used in preparing the final report has been collected, processed and published with rigour and that appropriate quality assurance (QA) processes are in place, and embedded, within the contracting organisation. The Contractor will provide the MMO with relevant assurances around QA procedures and/or certifications from recognised standards providers (eg ISO). Please refer to the MMO's Quality Assurance of Evidence processes for guidance as to what the MMO will be looking for. (<http://webarchive.nationalarchives.gov.uk/20140305093254/http://www.marinemanagement.org.uk/evidenc/e/documents/qa-evidenceprocess.pdf>)

9. Evaluation criteria [relevant only if going to tender]

Evaluation weightings are 30% cost and 70% technical

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Cost (30%)

Tenderers are required to submit a total cost for completion of the project, and include a breakdown of costs against each objective and against key personnel. Costs will need to be reasonable and competitive, and offer value for money.

Evaluation of cost

The calculation used is the following:

$$\text{Score} = \frac{\text{Lowest Tender Price}}{\text{Tender Price}} \times 30 \% \text{ (Maximum available marks)}$$

For example, if three Tender Responses are received and Tenderer A has quoted £3,000 as their total price, Tenderer B has quoted £5,000 and Tenderer C has quoted £6,000 then the calculation will be as follows:

Tenderer A Score = £3000/£3000 x 30 % = 30% (maximum score)

Tenderer B Score = £3000/£5000 x 30 % = 18%

Tenderer C Score = £3000/£6000 x 30 % = 15%

Technical (70%)

Technical evaluations will be based on responses to specific questions covering key criteria which are outlined below. Scores for questions will be based on the following:

Score	Justification
For a score of hundred (100):	Excellent - Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full.
For a score of seventy (70):	Good - Response is relevant and good. The response demonstrates a good understanding and provides details on how the requirements will be fulfilled.
For a score of fifty (50):	Acceptable - Response is relevant and acceptable. The response provides sufficient evidence to fulfil basic requirements.
For a score of twenty (20):	Poor - Response is partially relevant and/or poor. The response addresses some elements of the requirements but contains insufficient / limited detail or explanation to demonstrate how the requirement will be fulfilled.
For a score of zero (0):	Unacceptable - Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.

Technical evaluation is assessed over three areas weighed as;

- Expertise and experience (40%)
- Project planning, management, and delivery (30%)
- Methodology (30%)

Expertise and experience (40%)

Provide details of the project team (including any sub-contractors) and the key personnel who will be involved in delivering the project, outlining their expertise to deliver the project. CVs can be attached as an annex (limit to 2 sides of A4 per CV).

Provide information on 3 relevant examples of projects undertaken which demonstrate suitable and relevant experience.

Responses should not exceed four sides of A4. CVs do not contribute to page limits.

Evaluation Criteria

Your response should:

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- Identify all key staff (including sub-contractors), their grades, and roles within this project, and demonstrate that the project team is well suited to achieving the projects objectives.
- Demonstrate that the project team provides value for money whilst retaining a good balance of expertise on the more challenging tasks.
- Demonstrate that the project team have suitable experience for the tasks required.

Evaluation will encompass the textual response, attached CVs, and key personnel time by objective breakdown used in costing.

Project planning, management, and delivery (30%)

Provide information on how you would plan, manage and deliver this project.

Responses should not exceed four sides of A4.

Evaluation Criteria

Your response should include:

- a project plan and a Gantt chart to show key timelines, and milestones
- details on the quality assurance processes in place to procedures to ensure that the final outputs are robust.
- an assessment of project specific risks, how these will be managed and mitigated. This should include an assessment of any residual post mitigation risk.

Methodology (30%)

Provide details of the methodology and approaches proposed to deliver the requirements of this project.

Responses should not exceed four sides of A4.

Evaluation Criteria

Your response should include:

- demonstration of a clear understanding of the nature of the requirements
- a clear, practical, achievable and cost-effective methodology to deliver these requirements
- information in sufficient detail to allow a full appraisal of the suitability of the approach to deliver for the project