



Crown  
Commercial  
Service

**CONTRACT TERMS**

**RESEARCH**

**MARKETPLACE**

**DYNAMIC PURCHASING**

**SYSTEM**

**REFERENCE NUMBER**

**RM6018**

## CONTENTS

### INTRODUCTION

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<u>1</u>	<u>APPOINTMENT &amp; STATEMENTS OF WORK TERM</u>
<u>2</u>	<u>CONTRACT GUARANTEE</u>
<u>3</u>	
<u>4</u>	<u>CUSTOMERS OBLIGATIONS</u>
<u>5</u>	<u>SERVICE DELIVERY DELAY AND RECTIFICATION</u>
<u>6</u>	<u>SUPPLIER: OTHER APPOINTMENTS</u>
<u>7</u>	<u>CUSTOMER: OTHER APPOINTMENTS</u>
<u>8</u>	<u>PERSONNEL</u>
<u>9</u>	<u>VARIATIONS AND CANCELLATIONS</u>
<u>10</u>	<u>APPROVALS AND AUTHORITY</u>
<u>11</u>	<u>PROJECT MANAGEMENT</u>
<u>12</u>	<u>FEES AND INVOICING</u>
<u>13</u>	<u>THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING</u>
<u>14</u>	<u>DISCOUNTS AND REBATES</u>
<u>15</u>	<u>CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION</u>
<u>16</u>	<u>SUPPLIER WARRANTIES</u>
<u>17</u>	<u>CUSTOMER WARRANTIES</u>
<u>18</u>	<u>LIABILITY</u>
<u>19</u>	<u>INSURANCE</u>
<u>20</u>	<u>INTELLECTUAL PROPERTY RIGHTS</u>
<u>21</u>	<u>AUDIT</u>
<u>22</u>	<u>ADVERTISING STANDARDS – NOT USED</u>
<u>23</u>	<u>TERMINATION</u>
<u>24</u>	<u>CONSEQUENCES OF TERMINATION</u>
<u>25</u>	<u>FORCE MAJEURE</u>
<u>26</u>	<u>NOTICES</u>
<u>27</u>	<u>STAFF TRANSFER</u>
<u>28</u>	<u>THIRD PARTY RIGHTS</u>
<u>29</u>	<u>DATA PROTECTION, SECURITY AND PUBLICITY</u>
<u>30</u>	<u>RETENTION AND SET OFF</u>

<u>31</u>	<u>INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS</u>
<u>32</u>	<u>PREVENTION OF FRAUD AND BRIBERY</u>
<u>33</u>	<u>GENERAL</u>
<u>34</u>	<u>DISPUTE RESOLUTION</u>
<u>35</u>	<u>GOVERNING LAW AND JURISDICTION</u>
<u>36</u>	<u>ADDITIONAL</u>

SCHEDULE 1 – DEFINITIONS AND INTERPRETATIONS

SCHEDULE 2 – STATEMENT OF WORK

SCHEDULE 3 – STAFF TRANSFER

SCHEDULE 4 – DISPUTE RESOLUTION PROCEDURE

SCHEDULE 5 – VARIATION FORM

SCHEDULE 6 – CONTRACT CHARGES

SCHEDULE 7 – PROCESSING PERSONAL DATA AND DATA

SCHEDULE 8 – ADDITIONAL CLAUSES

SCHEDULE 9 – MOD DEFCONS AND DEFFORMS

## Contract Terms

This Contract is made on the 27<sup>th</sup> day of May 2020 between:

The SECRETARY OF STATE FOR JUSTICE of 102 Petty France, London, SW1H 9AJ, acting as part of the Crown on behalf of the Ministry of Justice ("the **Customer**"); and

Get The Data, a company registered in England and Wales under registration number 8059874 whose registered office is at Studio 26, Switchboard Studios, 153-157 Blackhorse Lane, London, England, E17 5QJ ("the **Supplier**"),

Both the Customer and the Supplier can be referred to as a "**Party**" or together the "**Parties**".

## INTRODUCTION

- (1) The Supplier is one of a number of organisations appointed by Crown Commercial Service (**CCS**) to the Dynamic Purchasing System (DPS) and is therefore able to enter into this Contract to provide the Project(s) to the Customer.
- (2) This Contract, made between the Customer and the Supplier, sets out the terms of the Supplier's appointment as a provider of the Project to the Customer. The Project will be delivered according to the terms of this Contract, any agreed Statement of Work, and the DPS Agreement.
- (3) The Supplier's appointment has been confirmed in the Letter of Appointment.
- (4) The Parties agree that the Project and associated Deliverables shall be supplied in accordance with the terms of the DPS Agreement and this Contract.

## 1. APPOINTMENT & STATEMENTS OF WORK

- 1.1. Throughout the Term of this Contract, the Supplier will perform Projects in accordance with agreed Statements of Work.
- 1.2. Subject to Clause 1.4 the Parties may agree new Projects to be delivered under this Contract by agreeing a new Statement of Work. This must be done in writing and using the form set out at Schedule 2 (Statement of Work). Once both Parties have signed a Statement of Work, it shall form part of this Contract.
- 1.3. Any schedule attached to a Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. A schedule attached to a Statement of Work only applies to the relevant Project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Project as a whole.
- 1.4. Where a Customer requires changes to the Project being provided this shall be dealt with as a proposed Variation to this Contract in accordance with the Variation procedure set out in Clause 9.

## 2. TERM

- 2.1. This Contract starts on the **Effective Date** and ends on the **Expiry Date**, as stated in the Letter of Appointment unless changed in accordance with the terms of this Contract.
- 2.2. The Customer may extend this Contract for any period up to the Extension Expiry Date by giving the Supplier notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Letter of Appointment.
- 2.3. The revised date the contract will end (the **New Expiry Date**) will be set out in the notice given under Clause 2.2 above.
- 2.4. The terms and conditions of this Contract will apply throughout any extended period.

- 2.5. Each Project starts on the Project Commencement Date and ends on the Project Completion Date, unless it is terminated earlier in accordance with Clause 23.

### 3. CONTRACT GUARANTEE

- 3.1. Where the Customer has stated in the Letter of Appointment that this Contract is conditional on receipt of a Guarantee, then, on or prior to the Effective Date (or on any other date specified by the Customer), the Supplier must provide:
- 3.1.1. an executed Guarantee from a Guarantor; and  
a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
- 3.2. The Customer may at any time agree to waive compliance with the requirement in Clause 3.1 by giving the Supplier notice in writing.

### 4. CUSTOMER'S OBLIGATIONS

- 4.1. The Customer will give the Supplier instructions as to its requirements for the Project. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Project.

### 5. SERVICE DELAY, DELIVERY & RECTIFICATION Service

#### Delivery

- 5.1. The Supplier will give the Customer full and clear instructions as to what, if any, Customer Materials it reasonably requires to perform the Project.
- 5.1.1. comply with all Law;
- 5.1.2. use all reasonable and proper skill and care in its performance of Project;
- 5.1.3. comply with all reasonable Customer instructions regarding the Project, as long as these instructions do not materially amend the Statement of Work (unless the amendment has been agreed in accordance with Clause 9.1);
- 5.1.4. keep Customer Materials under its control safe and secure and in accordance with any security policy provided by the Customer; and
- 5.1.5. provide all Deliverables by any dates set out in the applicable Statement of Work or any other date(s) agreed by the parties in writing.

#### Delay

- 5.2. If the Customer materially breaches its obligations in connection with this Contract (including its payment obligations), and consequently delays or prevents the Supplier from performing any of the agreed Services or providing any of the agreed Deliverables this will be a "**Customer Cause**". In the event of a Customer Cause, the Supplier will be granted an appropriate extension of time (to be approved by the Customer, acting reasonably) to perform the agreed Services or provide the agreed Deliverables. The Supplier will not be liable for any Losses incurred by the Customer as a result of Customer Cause, provided the Supplier complies with its obligations set out at Clause 5.4.
- 5.3. The Supplier must notify the Customer within two (2) Working Days of the Supplier becoming aware that the Customer has breached, or is likely to breach, its obligations in connection with this Contract. This notice must detail:
- 5.3.1. the Customer Cause and its actual or potential effect on the Supplier's ability to meet its obligations under this Contract, and
- 5.3.2. any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause.

- 5.4. The Supplier must use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause. The Supplier must try to mitigate against any Losses that the Customer or the Supplier may incur, and the duration and consequences of any delay or anticipated delay.
- 5.5. If at any time the Supplier becomes aware that it may not be able to deliver the Project by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), this will constitute a Default and the Supplier will immediately notify the Customer of the Default and the reasons for the Default.
- 5.6. If the Default described in Clause 5.5 above is in the Customer's opinion capable of remedy the Customer may, up to 10 Working Days from being notified of the Default, instruct the Supplier to comply with the Rectification Plan Process.

#### **Rectification Plan Process**

- 5.7. If instructed to comply with the Rectification Plan Process by the Customer under Clause 5.6 above, the Supplier will submit a draft Rectification Plan to the Customer to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from being instructed to do so. The Supplier shall submit a draft Rectification Plan even if the Supplier does not agree that the Default is capable of remedy.
- 5.8. The draft Rectification Plan shall set out:
- 5.8.1 full details of the Default that has occurred, including the underlying reasons for it;
  - 5.8.2 the actual or anticipated effect of the Default; and
  - 5.8.3 the steps which the Supplier proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
- 5.9. The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Supplier's reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with paragraph 5 of Schedule 4 (Dispute Resolution Procedure).
- 5.10 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
- 5.10.1 is insufficiently detailed to be capable of proper evaluation;
  - 5.10.2 will take too long to complete;
  - 5.10.3 will not prevent reoccurrence of the Default;
  - 5.10.4 will rectify the Default but in a manner which is unacceptable to the Customer; or
  - 5.10.5 will not rectify the Default.
- 5.11 The Customer will tell the Supplier as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.
- 5.12 If the customer rejects the draft Rectification Plan, the customer will give reasons for its decision in its rejection notice. The Supplier must take these reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit a revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's rejection notice.
- 5.13 If the Customer agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

## **6. SUPPLIER: OTHER APPOINTMENTS**

- 6.1 Adverse public perception could have a detrimental impact on the Customers desired outcomes for the Project. To minimise this risk, the Supplier must not, without the Customer's Approval (not to be unreasonably withheld), provide research services to a third party during the Term of this Contract where the provision of such services (in the reasonable opinion of the Customer):
- 6.1.1 has the potential to adversely affect the Customer's desired outcome of the Project or diminish the trust that the public places in the Customer; or
  - 6.1.2 is likely to cause embarrassment to the Customer or bring the Customer into disrepute or may result in a conflict of interest for the Customer.
- 6.2 Where the Supplier is already providing research services to a third party in the situations set out in 6.1 prior to the Effective Date, the Supplier warrants that it has informed the Customer of this before entering into this Contract.
- 6.3 If the Supplier becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Supplier must notify the Customer immediately, providing full details of the nature of the breach and the likely impact on any Projects
- 6.4 If the Supplier breaches Clause 6.1, the Customer may terminate this Contract, a Project, or any part of a Project with immediate effect in accordance with Clause 23.3.

## **7. CUSTOMER: OTHER APPOINTMENTS**

- 7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Customer is entitled to appoint any other Supplier to perform the Project which are the same or similar to the Project.

## **8. PERSONNEL**

- 8.1 The Supplier must ensure that Supplier personnel who provide the Project:
- 8.1.1 are appropriately experienced, qualified and trained to provide the Project in accordance with this Contract;
  - 8.1.2 apply all reasonable skill, care and diligence in providing the Project;
  - 8.1.3 obey all lawful instructions and reasonable directions of the Customer and provide the Project to the reasonable satisfaction of the Customer, and
  - 8.1.4 are vetted in accordance with Good Industry Practice and where applicable, the security requirements of the Customer and the Standards.
- 8.2 The Supplier will be liable for all acts or omissions of the Supplier personnel. Any act or omission of a member of any Supplier personnel which results in a breach of this Contract is a breach by the Supplier.
- 8.3 The Customer acknowledges and agrees that it may be necessary for the Supplier to replace the personnel providing the Project with alternative personnel with similar levels of seniority and experience.
- 8.4 The Supplier will seek to ensure that any Key Individual responsible for the provision of the Project will remain involved in the Project. If any Key Individual leaves the Supplier, or ceases to be involved in the provision of the Project for any reason (for example, if they are promoted to a different role within the Supplier), the Supplier will consult with the Customer and, subject to the Customer's Approval, appoint a suitable replacement.
- 8.5 If the Customer reasonably believes that any of the Supplier personnel are unsuitable to undertake

work on this Contract, it will notify the Supplier who will then end the person's involvement in providing the Project.

## **9. VARIATIONS AND CANCELLATIONS**

- 9.1 Either Party may request a change to this Contract, a Project or a Statement of Work. Any requested change must not amount to a material change of this Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
- 9.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
- 9.3 Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The time limits shall be reasonable and ultimately at the discretion of the Customer, having regard to the nature of the Project and the proposed Variation.
- 9.4 If the Supplier requests a Variation, the Customer can ask the Supplier to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
- 9.4.1 the impact of the proposed Variation on the Project and Supplier's ability to meet its other obligations under this Contract (including in relation to other Statements of Work);
  - 9.4.2 the initial cost of implementing the proposed Variation and any ongoing costs post-implementation;
  - 9.4.3 any increase or decrease in the Contract Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
  - 9.4.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - 9.4.5 any other information the Customer reasonably asks for in response to the Variation request.
- 9.5 The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
- 9.6 If the Parties agree the Variation, the Supplier will implement it, and be bound by it as if it was part of this Contract.
- 9.7 Until a Variation is agreed, the Supplier must continue to perform and be paid for the Project as originally agreed, unless otherwise notified by the Customer.
- 9.8 Subject to Clauses 9.9 and 23.1 the Customer can require the Supplier to suspend or cancel any Project or Statement of Work, or any part of a Project, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Customer Approver in writing. The Supplier will take all reasonable steps to comply with any such request as soon as possible.
- 9.9 In the event of any cancellation under Clause 9.8, the Customer will pay the Supplier all Contract Charges reasonably and properly incurred by the Supplier during the Project Notice Period, provided that the Supplier uses all reasonable endeavours to mitigate any charges or expenses.

## **10. APPROVALS AND AUTHORITY**



- 10.1 For the purposes of this Contract, any reference to Customer Approval means written approval in one of the following ways:
- 10.1.1 the Customer issuing a purchase order bearing the signature of an Authorised Customer Approver, or
  - 10.1.2 e-mail from the individual business e-mail address of an Authorised Customer Approver, or
  - 10.1.3 the signature of an Authorised Customer Approver on the Supplier's documentation
- 10.2 Any reference to Supplier Approval means written approval in one of the following ways:
- 10.2.1 e-mail from the individual business e-mail address of an Authorised Supplier Approver, or
  - 10.2.2 the signature of an Authorised Supplier Approver on the Customer's documentation
- 10.3 The Supplier will seek the Customer's Approval of:
- 10.3.1 any estimates or quotations for any costs to be paid by the Customer that are not agreed in a Statement of Work.
- 10.4 The Supplier will seek the Customer's Approval of any draft Deliverables. The Customer's Approval will be the Supplier's authority to proceed with the use of the relevant Deliverables.
- 10.5 If the Customer does not approve of any matter requiring Approval, it must notify the Supplier of its reasons for disapproval within fourteen (14) days of the Supplier's request.
- 10.6 If the Customer delays giving Approval or notifying the Supplier as to its disapproval, the Supplier will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

## **11. PROJECT MANAGEMENT**

- 11.1 During the Term of this Contract, the Supplier will:
- 11.1.1 keep the Customer fully informed as to the progress and status of all Services and Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties.
  - 11.1.2 promptly inform the Customer of any actual or anticipated problems relating to provision of the Deliverables.
- 11.2 During the Term, the Parties' respective project managers will arrange and attend meetings to review the status and progress of the Project(s) and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.
- 11.3 Unless otherwise agreed in the Statement of Work, the Supplier will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within three (3) Working Days of such discussions. If the Customer does not question any of the subject matter of a contact report within seven (7) Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

## **12. FEES AND INVOICING**

- 12.1. The Contract Charges for the Project will be the full and exclusive remuneration of the Supplier for supplying the Project. Unless expressly agreed in writing by the Customer in the Statements of Work, the Contract Charges will include every cost and expense of the Supplier directly or indirectly incurred

in connection with the performance of the Project.

- 12.2. All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Project.
- 12.3. The Supplier will invoice the Customer in accordance with the payment profile agreed in the Statements of Work. Each invoice will include all supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Project supplied in the invoice period.
- 12.4. The Customer will pay the Supplier the invoiced amounts no later than thirty (30) days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under this Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 12.5. If the Customer does not pay an undisputed amount properly invoiced by the due date, the Supplier has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.6. The Customer is entitled to deduct from any sum due any money that the Supplier owes the Customer. This includes any sum which the Supplier is liable to pay to the Customer in respect of breach of this Contract. In these circumstances, the Supplier may not assert any credit, set-off or counterclaim against the Customer.
- 12.7. The Supplier will indemnify the Customer on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Contract. Any amounts due under Clause 12.2 will be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 12.8. If there is a dispute between the Parties about an amount invoiced, the Customer will pay the undisputed amount by the due date. The Supplier will not suspend the supply of the Project in any Project, unless the Supplier is entitled to terminate that Project for a failure to pay undisputed sums in accordance with Clause 23.7.7.

### **13. THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING Assignment**

#### **and Sub-Contracting**

- 13.1. Other than where a Sub-Contractor is agreed in the Letter of Appointment or a Statement of Work, the Supplier will not, without the Approval of the Customer, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Contract or any part of it.
- 13.2. In requesting Approval to sub-contract, the Supplier will:
  - 13.2.1 use reasonable care and skill in the selection of proposed Sub-Contractors;
  - 13.2.2 if the Customer requests, the Supplier will obtain more than one quote for a particular sub-contracted service; and
  - 13.2.3 provide the Customer with a business case for sub-contracting all or part of the Project, identifying the reasons for the Supplier to sub-contract to its proposed Sub-Contractor. The Customer may reject the Supplier's request to appoint a proposed Sub-Contractor if it considers the proposed Sub-Contractor does not provide value for money.
- 13.3. If the Customer consents to the Supplier's proposed Sub-Contractor, it shall be a Sub- Contractor as the term is defined in Schedule 1 (Definitions).

- 13.4. In granting consent to any assignment, novation sub-contracting or disposal, the Customer may set additional terms and conditions it considers necessary.
- 13.5. The Supplier shall ensure that its Sub-Contractor does not further sub-contract all or part of the Project or Deliverables without the Customer's Approval.
- 13.6. Any contracts the Supplier enters into with third party suppliers for Services and Deliverables ("**Sub-Contracts**") must be on terms that are in line with the Supplier's standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Contract.
- 13.7. Provided that the Supplier has notified the Customer of any significant restrictions or contract terms contained in any Sub-Contracts, the Customer hereby acknowledges that:
  - 13.7.1. its right to use or otherwise benefit from any Services or Deliverables acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
  - 13.7.2. it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Supplier is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Customer or its Affiliates.
- 13.8. The Supplier will promptly provide the Customer with a copy of any Sub-Contract if requested to do so.
- 13.9. The Supplier will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 13.10. The Supplier will obtain the Customer's Approval before commissioning services from any Supplier Affiliate.

#### **Supply Chain Protection**

- 13.11. The Supplier will ensure that all Sub-Contracts contain provisions:
  - 13.11.1 Requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
  - 13.11.2. requiring the Supplier to verify any invoices submitted by a Sub-Contractor in a timely manner;
  - 13.11.3. giving the Customer the right to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
  - 13.11.4. giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and
  - 13.11.5. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.

#### **14. DISCOUNTS AND REBATES**

- 14.1. The Supplier will disclose to the Customer any commission, discount or rebate earned by the Supplier arising in respect of third party costs directly related to the Projects. The Customer will receive the full benefit of such commission, discount or rebate.

#### **15. CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION CONFIDENTIALITY**

- 15.1. For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a "**Recipient**". A Party which discloses or makes available Confidential Information is a "**Disclosing Party**".

- 15.2. Unless a Recipient has express permission to disclose Confidential Information, it must:
- 15.2.1. treat the Disclosing Party's Confidential Information as confidential and store it securely;
  - 15.2.2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or with the owner's prior written consent;
  - 15.2.3. not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract, and
  - 15.2.4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.3 A Recipient is entitled to disclose Confidential Information if:
- 15.3.1. where disclosure is required by applicable Law or by a court with the required jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information Contract and extent of the disclosure;
  - 15.3.2. if the Recipient already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
  - 15.3.3. if the information was given to it by a third party without obligation of confidentiality;
  - 15.3.4. if the information was in the public domain at the time of the disclosure;
  - 15.3.5. if the information was independently developed without access to the Disclosing Party's Confidential Information;
  - 15.3.6. to its auditors or for the purposes of regulatory requirements;
  - 15.3.7. on a confidential basis, to its professional advisers on a need-to-know basis; and/or
  - 15.3.8. to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 15.4 If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
- 15.5 Subject to Clauses 15.3 the Supplier may disclose Confidential Information, on a confidential basis, to:
- 15.5.1. Supplier personnel or Sub-Contractors who are directly involved in the provision of the Project and need to know the Confidential Information to enable performance under this Contract, and
  - 15.5.2. its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 15.6 Where the Supplier discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Contract.
- 15.7 The Customer may disclose the Confidential Information of the Supplier:
- 15.7.1. to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies
  - 15.7.2. to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
  - 15.7.3. if disclosure is necessary or appropriate in the course of carrying out its public functions
  - 15.7.4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Contract

- 15.7.5. on a confidential basis for the purpose of the exercise of its rights under this Contract, or
- 15.7.6. to a proposed successor in title (transferee, assignee or novatee) of the Customer.
- 15.8 Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 15.
- 15.9 Nothing in this Clause 15 will prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.10 If the Supplier fails to comply with this Clause 15, the Customer can terminate this Contract.

#### **TRANSPARENCY**

- 15.11 Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract (and any Transparency Reports submitted by the Supplier under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15  
[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein.
- 15.12 The Customer will determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Supplier to inform its decision regarding any redactions but will have absolute discretion over the final decision.
- 15.13 Notwithstanding any other provision of this Contract, the Supplier consents to the Customer publishing this Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted).
- 15.14 The Supplier will cooperate with the Customer to enable publication of this Contract.

#### **FREEDOM OF INFORMATION**

- 15.15 The Customer is subject to the requirements of the FOIA and the EIRs. The Supplier will:
  - 15.15.1. provide all necessary assistance to the Customer to enable it to comply with its Information disclosure obligations.
  - 15.15.2. send all Requests for Information it receives relating to this Contract to the Customer as soon as practicable and within a maximum of two (2) Working Days from receipt.
  - 15.15.3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days of the Customer's request.
- 15.16 The Supplier must not respond directly to a Request for Information without the Customer's Approval.
- 15.17 The Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer will take reasonable steps to notify the Supplier of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Customer will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **16. SUPPLIER WARRANTIES**

- 16.1. The Supplier warrants that:
  - 16.1.1 it has full capacity and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party;
  - 16.1.2 the personnel who perform the Project are competent and suitable do so;
- 16.2. The Supplier undertakes that:
  - 16.2.1. the use of the Deliverables by the Customer in accordance with this Contract and for the

purposes set out in the Statement of Work will not infringe the copyright of any third party; and

16.2.2. as at the date they are delivered, the Deliverables of this Contract may be used for the purposes set out in the Statement of Work and comply with all relevant regulations and standards stipulated within the Statement of Work.

16.3. The Supplier hereby indemnifies the Customer against any Losses incurred by the Customer as a result of breach by the Supplier of its warranty and undertaking in Clauses 16.1 and 16.2.

## **17. CUSTOMER WARRANTIES**

17.1. The Customer warrants that:

17.1.1 it has full capacity and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party; and

17.1.2 the Customer Materials will not, when used in accordance with this Contract and any written instructions given by the Customer, infringe third party copyright.

## **18. LIABILITY**

18.1. Nothing in this Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.

18.2. Subject always to Clauses 18.1 and 18.3, the maximum amount the Supplier can be liable for in respect of all Defaults shall in no event exceed:

18.2.1. in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges estimated by the Customer for the first Contract Year;

18.2.2. in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and

18.2.3. in relation to any Defaults occurring in each Contract year that commences after the end of the Initial Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract charges payable to the Supplier under this Contract in the last Contract Year commencing during the Term.

18.3. Subject to Clause 18.1 and except for any claims arising under Clause 20.12, neither Party will be liable to the other in any situation for any:

18.3.1. loss of profits

18.3.2. loss of goodwill or reputation

18.3.3. loss of revenue

18.3.4. loss of savings whether anticipated or otherwise; or

18.3.5. indirect or consequential loss or damage of any kind

18.4. Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.

## **19. INSURANCE**

19.1. The Supplier will hold insurance policies to the value sufficient to meet its liabilities in connection with

this Contract (including any specific insurance requirements as are set out in the Statements of Work). The Supplier will provide the Customer with evidence that such insurance is in place at the Customer's request.

- 19.2. The Supplier will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
- 19.3. If, for whatever reason, the Supplier fails to comply with the provisions of this Clause 19 the Customer may make alternative arrangements to protect its interests. If the Customer does so, it may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 19.4. Any insurance effected by the Supplier will not relieve it of any liability under this Contract. It is the Supplier's responsibility to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Contract.
- 19.5. The Supplier must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Supplier will use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **20. INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 20.1. The Supplier acknowledges that the Customer retains ownership of Customer Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Customer Materials produced by the Supplier in the course of delivering the Project. The Customer hereby grants to the Supplier a non-exclusive license to use the Customer Materials during the applicable Project Term solely for the purposes of delivering the Project.
- 20.2. The Supplier hereby:
  - 20.2.1. assigns to the Customer all of the Intellectual Property Rights other than copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Supplier Materials; and
  - 20.2.2. assigns to the Crown all of the copyright and database rights in the Supplier Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Supplier Materials.
- 20.3. All Intellectual Property Rights in the Supplier Proprietary Materials remain the property of the Supplier. The Supplier grants to the Customer a non-exclusive, royalty-free license to use any Supplier Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work.
- 20.4. All Intellectual Property Rights in Project Specific Materials shall be owned by the Customer and the Customer hereby grants a non-exclusive, royalty-free license to use any Project Specific Materials for the purposes of providing the Project throughout the Term.
- 20.5. Prior to delivery of the Deliverables to the Customer, the Supplier will obtain all licenses or consents in respect of Third Party Materials that are required so the Customer can use these Third Party Materials for the purposes set out in the Statement of Work. The Supplier will notify the Customer of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials.
- 20.6. The Supplier agrees:
  - 20.6.1. at the Customer's request and expense, to take all such actions and execute all such

documents as are necessary (in the Customer 's reasonable opinion) to enable the Customer to obtain, defend or enforce its rights in the Supplier Materials and Deliverables; and

- 20.6.2. neither to do nor fail to do any act which would or might prejudice the Customer's rights under this Clause 20.
- 20.7. To the extent permitted by law, the Supplier shall ensure that all Moral Rights in the Supplier Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Supplier agrees not to assert any Moral Rights in respect of the Supplier Materials.
- 20.8. The Supplier will use its reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Supplier will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials. If the Supplier cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Supplier will notify the Customer and will obtain the Customer 's Approval prior to incorporating such Third Party Materials into the Deliverables.
- 20.9. During the Term, if the Supplier is asked to take part in a competitive pitch or other similar process for the Customer, then notwithstanding any of the previous provisions of this Clause 20, the Supplier will retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process. If the Supplier is successful in such pitch and the Parties agree that such Materials will be used in a Project the Supplier will assign all such Intellectual Property Rights to the Customer.
- 20.10. The Supplier is not liable in connection with this Contract for any modifications, adaptations or amendments to any Deliverables made by the Customer or by a third party on the Customer's behalf after the Supplier has handed them over. The Supplier is also not liable if any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Customer or its Affiliates.
- 20.11. The terms of and obligations imposed by this Clause 20 continue after the termination of this Contract.
- 20.12. The Supplier will indemnify the Customer in full against all Losses (whether direct or indirect) in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights in connection with the supply or use of the Project, if the claim is attributable to the acts or omission of the Supplier any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer.

## **21. AUDIT**

- 21.1. The Supplier will keep and maintain full and accurate records and accounts of the operation of this Contract, the Project provided under it, any Sub-Contracts and the amounts paid by the Customer for at least seven (7) years after the Expiry Date or New Expiry Date, or such longer period as the Parties agree.
- 21.2. The Supplier will:
- 21.2.1. keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law, and
- 21.2.2. afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Supplier and/or its Sub-Contractors with the Supplier's obligations under this Contract, and in particular to:



- a) verify the accuracy of the Contract Charges and any other amounts payable by the Customer under this Contract (and proposed or actual variations to them in accordance with this Contract);
- b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Project;
- c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Laws;
- d) identify or investigate an actual or suspected act of fraud or bribery, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances, the Customer is not obliged to inform the Supplier of the purpose or objective of its investigations;
- e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier or any Sub-Contractors or their ability to perform the Project;
- f) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes, including the supply of information to the Comptroller and Auditor General;
- g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- h) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts
- i) enable the National Audit Office to carry out an examination under Section 6(1) of the National Audit Act 1983;
- j) review any records relating to the Supplier's performance of the provision of the Project and to verify that these reflect the Supplier's own internal reports and records;
- k) verify the accuracy and completeness of any information delivered or required by this Contract;
- l) inspect the Customer Materials, including the Customer's Intellectual Property Rights, equipment and facilities, for the purposes of ensuring that the Customer Materials are secure; and
- m) review the integrity, confidentiality and security of any Customer data.

21.2.3. audit does not unreasonably disrupt the Supplier or delay the provision of the Project (although the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.)

21.3. Subject to the Supplier's rights in respect of Confidential Information, the Supplier will on demand, provide the Auditor(s) with all reasonable co-operation and assistance in providing:

21.3.1. all reasonable information requested by the Customer within the scope of the audit;

21.3.2. reasonable access to sites controlled by the Supplier and to any equipment used in the provision of the Project; and

21.3.3. access to the Supplier personnel.

- 21.4. The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, unless the Audit reveals a default by the Supplier, whereby the Supplier will reimburse the Customer for the Customer's reasonable costs incurred in relation to the Audit.
- 21.5. If an Audit reveals that the Customer has been overcharged, the Supplier will reimburse to the Customer the amount of the overcharge within thirty (30) days. If an Audit reveals the Supplier has been underpaid, the Customer shall pay to the Supplier the amount of the underpayment within thirty (30) days.

**22. NOT USED**

**23. TERMINATION**

***Customer Rights of Termination***

- 23.1. The Customer may, by giving no less than three (3) month's written notice to the Supplier, terminate this Contract without cause.
- 23.2. The Customer may terminate or cancel a Project at any time subject to Clause 9.8 and payment of all Contract Charges specifically set out at Clause 9.9 of Clause 9 (Variations and Cancellations).
- 23.3. The Customer may terminate this Contract or a Project by written notice to the Supplier with immediate effect if the Supplier:
- 23.3.1. commits a material Default which cannot be remedied;
  - 23.3.2. repeatedly breaches any of the terms and conditions of this Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
  - 23.3.3. commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer within thirty (30) days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
  - 23.3.4. breaches any of the provisions of Clauses 6.1 (Supplier: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 32 (Prevention of Fraud and Bribery);
  - 23.3.5. is subject to an Insolvency Event; or
  - 23.3.6. fails to comply with legal obligations.
- 23.4. The Supplier must notify the Customer as soon as practicable of any Change of Control or any potential Change of Control.
- 23.5. The Customer may terminate this Contract with immediate effect by written notice to the Supplier within six (6) Months of:
- 23.5.1. being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
  - 23.5.2. where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 23.6. The Customer may terminate this Contract or a Project by giving the Supplier at least fourteen (14) days' notice if:
- 23.6.1. the DPS Agreement is terminated for any reason;
  - 23.6.2. the Parties fail to agree a Variation under Clause 9; or
  - 23.6.3. the Supplier fails to implement an agreed Variation.

23.7. Where this Contract is conditional upon the Supplier procuring a Guarantee pursuant to Clause 3 (Contract Guarantee), the Customer may terminate this Contract by issuing a notice of termination Notice to the Supplier where:

23.7.1. the Guarantor withdraws the Guarantee for any reason;

23.7.2. the Guarantor is in breach or anticipatory breach of Guarantee;

23.7.3. an Insolvency Event occurs in respect of the Guarantor; or

23.7.4. the Guarantee becomes invalid or unenforceable for any reason whatsoever,

23.7.5. and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Customer; or

23.7.6. the Supplier fails to provide the documentation required by Clause 3.1 by the date so specified by the Customer.

***Supplier Rights to Terminate***

23.8. The Supplier may terminate a Project by written notice to the Customer if:

23.9. the Customer has not paid any undisputed amounts falling due under that Project, and

23.10. the undisputed sum due remains outstanding for forty (40) Working Days after the Customer has received a written notice of non-payment from the Supplier specifying:

a) the Customer's failure to pay;

b) the correct overdue and undisputed sum;

c) the reasons why the undisputed sum is due; and

d) the requirement on the Customer to remedy the failure to pay

This right of termination does not apply where the failure to pay is due to the Customer exercising its rights under this Contract (including the right to set off under Clause 29). This Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under this Contract including Clause 30 (Retention and Set off).

23.11. The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).

**24. CONSEQUENCES OF TERMINATION**

24.1. Termination of a Project in accordance with the terms of this Contract by either Party shall not serve to terminate this Contract, which will continue in full force and effect.

24.2. If this Contract is terminated, all ongoing and outstanding Projects will also terminate on the same date as this Contract.

24.3. Upon termination of this Contract or a Project for any reason:

24.3.1. the Expiry Date or New Expiry Date shall be the date this Contract terminates;

24.3.2. the Customer will pay the Supplier all Contract Charges falling properly due and payable to the Supplier prior to the date of termination (including in accordance with Clause 9 where relevant);

24.3.3. each Party will, following a reasonable request by the other Party, promptly deliver or

dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects. On the request of the other Party, each will certify in writing that the same has been done; and

24.3.4. the Supplier and its staff will vacate any premises of the Customer occupied for any purpose of providing the Project or Deliverables.

24.4. Any provisions of this Contract which are to continue after termination will remain in full force and effect after this Contract is terminated. Such provisions may include (but are not limited to):

24.4.1. Clause 15 (Confidentiality, Transparency and Freedom of Information)

24.4.2. Clause 16 (Supplier warranties) Clause 17 (Customer warranties)

24.4.3. Clause 18 (Liability)

24.4.4. Clause 19 (Insurance)

24.4.5. Clause 20 (Intellectual Property Rights)

24.4.6. Clause 21 (Audit)

24.4.7. Clause 23 (Termination)

24.4.8. Clause 26 (Notices)

24.4.9. Clause 27 (Staff Transfer)

24.4.10. Clause 28 (Third Party Rights)

24.4.11. Clause 29 (GDPR, Security & Publicity)

24.4.12. Clause 32 (General) and

24.4.13. Clause 34 (Governing law and jurisdiction)

24.4.14. Contract Schedule 1 (Definitions and Interpretation), Contract Schedule 3 (Staff Transfer), Contract Schedule 4 (Dispute Resolution Procedure).

## 25. FORCE MAJEURE

25.1. Neither Party will have any liability under or be in breach of this Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a **Force Majeure Event** and the **Affected Party**).

25.2. Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for sixty (60) consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this DPS Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.

25.3. If a Force Majeure event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Contract as far as is possible. Where the Supplier is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## 26. NOTICES

26.1. Any notices sent under this Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

Notice delivered	Deemed time of delivery	Proof of service
In person	At the time of delivery	Proof that delivery was made (e.g. a signature is obtained)
By first class post, special delivery or other recorded delivery	2 Working Days from the date of posting	Proof that the envelope was addressed and delivered into the custody of the postal authorities
Email	09:00 hours on the first Working Day after sending	Dispatched in an emailed pdf to the correct email address without any error message

26.2. The address and email address of each Party will be:

26.2.1. Supplier:

26.2.2. Customer:

26.3. For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

## 27. STAFF TRANSFER

27.1. The Parties agree that

27.1.1. if providing the Project means staff must be transferred from the Customer to the Supplier, where the commencement of the provision of the Project or any part of the Project results in one or more Relevant Transfers, Schedule 3 (Staff Transfer) will apply as follows:

- a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 3 (Staff Transfer) will apply
- b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 3 (Staff Transfer) will apply
- c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 3 (Staff Transfer) will apply, and
- d) Part C of Schedule 3 (Staff Transfer) will not apply

27.2. Where providing the Project does not result in a Relevant Transfer, Part C of Schedule 3 (Staff Transfer) will apply and Parts A and B of Schedule 3 (Staff Transfer) shall not apply; and

27.3. Part D of Schedule 3 (Staff Transfer) will apply on the expiry or termination of the Services or any part of the Project.

- 27.4. Both during and after the Term, the Supplier will indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer due to any act or omission of the Supplier or any Supplier personnel.

## **28. THIRD PARTY RIGHTS**

- 28.1. Except for CCS and the persons that the provisions of Schedule 3 of this Contract confer benefits on, a person who is not a Party to this Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

## **29. DATA PROTECTION, SECURITY AND PUBLICITY**

- 29.1. In addition to its general security obligations under this Contract, the Supplier shall comply with any security requirements specifically set out in the Statement of Work.

### **Data Protection**

- 29.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Contract Schedule 7 (Processing, Personal Data and Data Subjects) by the Customer and may not be determined by the Supplier.

- 29.3. The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

- 29.4. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- 29.4.1. a systematic description of the envisaged processing operations and the purpose of the processing;
- 29.4.2. an assessment of the necessity and proportionality of the processing operations in relation to the Project;
- 29.4.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
- 29.4.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 29.5. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- 29.5.1. process that Personal Data only in accordance with Schedule 7 (Processing, Personal Data and Data Subjects), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- 29.5.2. 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;

- 29.5.3. ensure that :

- (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Contract Schedule 7 (Processing, Personal Data and Data Subjects));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Supplier's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use , care, protection and handling of Personal Data; and
- 29.5.4. 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 Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 29.5.5. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.
- 29.6. Subject to Clause 29.7, the Supplier shall notify the Customer immediately if it:
  - 29.6.1. notify the Customer promptly if the Supplier receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 29.6.2. receives a request to rectify, block or erase any Personal Data;
  - 29.6.3. receives any other request, any complaint, notice or communication relating to either Party's obligations under the Data Protection Legislation;
  - 29.6.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 29.6.5. receives a request from any third Party for disclosure of Personal Data where that relates directly to its compliance with such request is required or purported to be required by Law; or Data Protection Legislation and/or the processing of personal data under or in connection with this Contract;
  - 29.6.6. becomes aware of a Data Loss Event.
- 29.7. The Supplier's obligation to notify under Clause 29.6 shall include the provision of further information to the Customer in phases, as details become available.
- 29.8. Taking into account the nature of the processing, the Supplier shall provide the Customer the

Customer with full cooperation and assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 29.6 (and insofar as possible (within the timescales reasonably required by the Customer) including by promptly providing:

- 29.8.1. the Customer with full details and copies of the complaint, communication or request;
  - 29.8.2. the Customer) in relation to any 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; complaint, communication or request;
  - 29.8.3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 29.8.4. assistance as if requested by the Customer following any Data Loss Event;
  - 29.8.5. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with Customer, provide a written description of the Information Commissioner's Office.
- 29.9. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 29.9.1. the Customer determines that the processing is not occasional;
  - 29.9.2. 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
  - 29.9.3. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 29.10. The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 29.11. The Supplier shall designate a data protection officer if required and use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation.
- 29.12. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
- 29.12.1. notify the Customer in writing of the intended Sub-processor and processing;
  - 29.12.2. obtain the written consent of the Customer;
  - 29.12.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 29.12 such that they apply to the Sub-processor; and
  - 29.12.4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 29.13. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 29.14. The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 29.15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office.



The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 29.16. The Supplier will not cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation, to the extent the Supplier is aware (or ought reasonably to have been aware), that the same would be a breach of such obligations. It will not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission under Article 25(6) of Directive 95/46/EC without Approval from the Customer.
- 29.17. The Supplier will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 29.18. Notwithstanding Clause 28.6, if Malicious Software is found, the Parties will co-operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Project.

#### **Customer Data**

- 29.19. The Supplier will not store, copy, disclose, or use the Customer Data except as necessary to perform its obligations under this Contract or where the Customer has given Approval.
- 29.20. If any Customer Data is held and/or Processed by the Supplier, the Supplier must supply that Customer Data to the Customer, at the time and in the format the Customer requests.
- 29.21. The Supplier is responsible for preserving the integrity of any Customer Data it holds or processes, and preventing its corruption or loss.
- 29.22. The Supplier will perform secure back-ups of all customer data and shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) on request.
- 29.23. The Supplier will ensure that any system it uses to holds any Customer Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Customer Data.
- 29.24. If any time the Supplier suspects or has any reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way, then the Supplier must notify the Customer immediately. This notification must contain information detailing the remedial action the Supplier proposes to take.

#### **Publicity and Branding**

- 29.25. The Supplier may not make any press announcements or publicise this Contract or use the Customer's name or brand in any promotion or marketing or announcement of orders without Approval from the Customer.
- 29.26. The Supplier will seek the Customer's Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

### **30. RETENTION AND SET OFF**

- 30.1. If the Supplier owes the Customer any money, the Customer may retain or set off this money against any amount owed to the Supplier under this Contract or any other agreement between the Supplier and the Customer. In order to exercise this right, the Customer will, within thirty (30) days of receipt of the relevant invoice, notify the Supplier of its reasons for retaining or setting off the relevant Contract Charges.
- 30.2. The Supplier will make any payments due to the Customer without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer.

### **31. INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

- 31.1. Where the Supplier or any Supplier personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier will:
  - 31.1.1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, and
  - 31.1.2. indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Project by the Supplier or any Supplier Personnel.
- 31.2. If any of the Supplier Personnel is a Worker as defined in Contract Schedule 1 (Definitions) who receives consideration relating to the Project, then, in addition to its obligations under Clause 31.1, the Supplier must ensure that its contract with the Worker contains the following requirements:
  - 31.2.1. that the Customer may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause 31.1, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided
  - 31.2.2. that the Worker's contract may be terminated at the Customer's request if:
    - a) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 31.2.1 and/or
    - b) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 31.2.1, or confirms that the Worker is not complying with those requirements
  - 31.2.3. that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

### **32. PREVENTION OF FRAUD AND BRIBERY**

- 32.1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:
  - 32.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
  - 32.1.2. been listed by any government department or Supplier as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 32.2. The Supplier must not:
- 32.2.1. commit a Prohibited Act; or
  - 32.2.2. do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 32.3. The Supplier shall during the Term:
- 32.3.1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 32.3.2. keep appropriate records of its compliance with its obligations under 32.3.1 and make such records available to the Customer on request;
  - 32.3.3. if so required by the Customer, within 20 days of the Effective Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Project in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 32.4. have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Supplier staff or Sub-Contractors or any person acting on the Supplier's behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Customer on request.
- 32.5. The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Supplier staff or Sub-Contractors have:
- 32.5.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 32.5.2. been listed by any government department or Supplier as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
  - 32.5.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract; or
  - 32.5.4. otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 32.6. If the Supplier makes a notification to the Customer under to Clause 32.5, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
- 32.7. If the Supplier breaches Clause 32.5, the Customer may by notice:
- 32.7.1. require the Supplier to remove any Supplier Personnel whose acts or omissions have caused the Supplier's breach from any Project; or
  - 32.7.2. immediately terminate this Contract for material Default.
- 32.8. Any notice served by the Customer under Clause 32.5 shall set out:
- 32.8.1. the nature of the Prohibited Act;
  - 32.8.2. the identity of the Party who the Customer believes has committed the Prohibited Act;
  - 32.8.3. the action that the Customer has elected to take; and

32.8.4. if relevant, the date on which this Contract shall terminate.

### **33. GENERAL**

- 33.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licenses and permissions to enter into and perform
- 33.2. its obligations under this Contract, and that this Contract is executed by its duly authorised representative.
- 33.3. This Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract.
- 33.4. Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
- 33.5. Any entire or partial waiver or relaxation of any of the terms and conditions of this Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular breach of this Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Contract.
- 33.6. This Contract does not constitute or imply any partnership, joint venture, Supplier, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party's behalf.
- 33.7. Unless expressly stated in this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
- 33.8. If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Contract.

### **34. DISPUTE RESOLUTION**

- 34.1. The Parties shall resolve Disputes in accordance with the Dispute Resolution Procedure.
- 34.2. The Supplier shall continue to provide the Project in accordance with the terms of this Contract until a Dispute has been resolved.

### **35. GOVERNING LAW AND JURISDICTION**

- 35.1. This Agreement will be governed by the laws of England and Wales.
- 35.2. Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all disputes shall be conducted within England and Wales.

### **36. Additional Clauses**

- 36.1. Where the Customer has so specified in the Letter of Appointment, the Supplier shall comply with the provisions of set out in Schedule 6 (Additional Clauses).

## **SCHEDULE 1**

### **Definitions and Interpretation**

#### **1. INTERPRETATION**

- 1.1. In this Contract, any references to numbered Clauses and schedules refer to those within this Contract unless specifically stated otherwise. If there is any conflict between this Contract, the Letter of Appointment, the provisions of the DPS Agreement and the Statements of Work(s), the conflict shall be resolved in accordance with the following order of precedence:
  - 1.1.1. the Letter of Appointment (except the Supplier Proposal)
  - 1.1.2. the Statement of Work
  - 1.1.3. the Contract Terms
  - 1.1.4. the Supplier Proposal, and
- 1.2. The definitions and interpretations used in this Contract are set out in this Schedule 1 (Definitions).
- 1.3. Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.
- 1.4. Unless the context otherwise requires:
  - 1.4.1. words importing the singular meaning include where the context so admits the plural meaning and vice versa
  - 1.4.2. words importing the masculine include the feminine and the neuter and vice versa
  - 1.4.3. the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them
  - 1.4.4. references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
  - 1.4.5. references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
  - 1.4.6. headings are included in this Contract for ease of reference only and will not affect the interpretation or construction of this Contract
- 1.5. If a capitalised expression does not have an interpretation in Contract Schedule 1 (Definitions) or relevant Schedule, it shall have the meaning given to it in the DPS Agreement. If no meaning is given to it in the DPS Agreement, it shall be interpreted in accordance with the relevant market sector/ industry meaning. Otherwise it shall be interpreted in accordance with the dictionary.
- 1.6. In this contract the following terms have the following meaning:

<b>Agreement</b>	means this Contract;
<b>Approval</b>	means the Approval given in accordance with Clause 10.1 or 10.2 as the context requires and " <b>Approve</b> ", " <b>Approving</b> " and " <b>Approved</b> " shall be construed accordingly.
<b>Affected Party</b>	means the Customer or the Supplier affected by the event
<b>Associates</b>	A Party's employees, officers, agents, sub-contractors or authorised representatives.
<b>Authorised Supplier Approver</b>	Any personnel of the Supplier who have the authority to contractually bind the Supplier in all matters relating to Contract. They must be named in the applicable Statement of Work, and the Customer must be notified if they change.
<b>Authorised Customer Approver</b>	Any personnel of the Customer who have the authority to contractually bind the Customer in all matters relating to this Contract. They must be named in the applicable Statement of Work, and the Supplier must be notified if they change.
<b>Contract</b>	This contract between the Customer and the Supplier (entered into under the provisions of the DPS Agreement), which consists of the terms set out in the Letter of Appointment, the Contract Terms, the Schedules and any Statement of Work.
<b>Contract Terms</b>	The terms and conditions set out in this Contract including this Schedule 1 but not including any other Schedules or Statement of Work.
<b>Central Government Body</b>	A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non- Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Supplier.
<b>Change of Control</b>	Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988.
<b>Customer Affiliates</b>	Any organisation associated with the Customer that will directly receive the benefit of the Project. Customer Affiliates must be named in a Statement of Work, or subsequently notified to the Supplier.
<b>Customer Project Specification</b>	The document containing the Customer's requirements issued either as part of the Call For Competition Process set out in Section 3 of the DPS Agreement or as set out in a Statement of Work from time to time.
<b>Customer Cause</b>	A situation where the Customer does not fulfil its obligations in connection with this Contract (including its payment obligations), and as a consequence the Supplier is prevented from performing any of the agreed Project.
<b>Customer Confidential Information</b>	All Customer Data and any information that the Customer or CCS gives to Agencies that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Customer's business, affairs, developments, trade secrets, Know-How, personnel and suppliers.

<b>Customer Data</b>	Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Customer's Confidential Information, supplied to the Supplier by or on behalf of the Customer, or which the Supplier is required to generate, process, store or transmit in connection this Contract, and any Personal Data for which the Customer is the Data Controller.
<b>Customer Materials</b>	Any Customer Data, Customer equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Customer which are provided to the Supplier or its Associates by or on behalf of the Customer.
<b>Contracting Body</b>	CCS, the Customer and any other bodies listed in the OJEU Notice.
<b>Contract Charges</b>	All charges payable by the Customer for the Project provided under this Contract calculated in accordance with DPS Schedule 3 (Charging Structure) and the Letter of Appointment including all Approved costs properly incurred by the Customer including but not limited to all Expenses, disbursement, taxes, sub-contractor or third party costs, and fees.
<b>Confidential Information</b>	The Customers Confidential Information and/or the Supplier Confidential Information.
<b>Contractor Personnel</b>	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.
<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer</b>	The meaning given in the GDPR.
<b>Contract Year</b>	A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof.
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>DPA 2018</b>	Data Protection Act 2018
<b>Data Protection Impact Assessment</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Subject Access Request</b>	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.
<b>Data Protection Legislation or DPA</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>Default</b>	Any breach of the obligations of the Supplier (including but not limited failing to provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), and abandonment of this Contract in breach of its terms) or any

	other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer.
<b>Deliverables</b>	The applied research services from Section 2 of the DPS Agreement that are to be provided as specified in a Statement of Work.
<b>Dispute</b>	Any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Project, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.
<b>Dispute Resolution Procedure</b>	The dispute resolution procedure set out in Contract Schedule 4 (Dispute Resolution Procedure).
<b>DPS Agreement</b>	The DPS Agreement between CCS and the Supplier reference number: RM6018 referred to in the Letter of Appointment
<b>DPS</b>	Means the dynamic purchasing system established by CCS for the provision of Research Services which are to be provided by the Supplier under the DPS Agreement.
<b>Effective Date</b>	The date this Contract starts, as set out in the Letter of Appointment.
<b>Environmental Information Regulations or EIRs</b>	The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
<b>Expenses</b>	Reasonable travelling, hotel, subsistence and other expenses incurred by the Supplier in connection with the supply Services of and Deliverables, provided that such Expenses have either received the Customers Approval or are in accordance with any expenses policies which have been supplied to the Supplier and set out in the agreed Statement of Work.
<b>Expiry Date</b>	The date this Contract ends, as set out in the Letter of Appointment.
<b>Extension Expiry Date</b>	The latest date this Contract can end, as set out in the Letter of Appointment.
<b>FOIA</b>	The Freedom of Information Act 2000 as amended from time to time 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.
<b>Force Majeure</b>	Means: <ul style="list-style-type: none"> <li>• acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party</li> <li>• riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li> <li>• fire, flood, any disaster and any failure or shortage of power or fuel</li> <li>• an industrial dispute affecting a third party for which a substitute third party is not reasonably available but does</li> </ul>



	<p>not mean:</p> <ul style="list-style-type: none"> <li>• any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier's (or a subcontractor's) supply chain</li> <li>• 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, and</li> </ul> <p>any failure of delay caused by a lack of funds</p>
<b>Further Competition Procedure</b>	The process of a Customer issuing a Project Specification and the Supplier submitting a proposal in response to such Project Specification, as set out in DPS Clause 3.10.
<b>GDPR</b>	Means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> )
<b>Good Industry Practice</b>	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.
<b>Guarantee</b>	A deed of guarantee that may be required under this Contract in favour of the Customer in the form set out in DPS Schedule 9 (Guarantee) granted pursuant to Clause 3 (Contract Guarantee).
<b>Guarantor</b>	The person, in the event that a Guarantee is required under this Contract, acceptable to the Customer to give a Guarantee.
<b>Impact Assessment</b>	The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4.
<b>Information</b>	The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time
<b>Insolvency Event</b>	<p>Means, in respect of the Supplier [or DPS Guarantor (as applicable)]:</p> <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or</li> <li>b) a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) 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</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a</li> </ul>

	<p>moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Supplier is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or</p> <p>d) any event analogous to these listed in this definition occurs under the law of any other jurisdiction</p>
<b>Intellectual Property Rights or IPR</b>	<p>The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:</p> <ul style="list-style-type: none"> <li>• any patents or patent applications</li> <li>• any trade marks (whether or not registered)</li> <li>• inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration</li> <li>• copyright or design rights (whether registered or unregistered)</li> <li>• database rights</li> <li>• performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world</li> <li>• any goodwill in any trade or service name, trading style or get-up and</li> <li>• any and all other intellectual or proprietary rights</li> </ul>
<b>Key Individuals</b>	Individuals named by the Supplier in the Letter or Appointment or Statement of Work as having a major responsibility for delivering the Project.
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
<b>LCIA</b>	means London Court of International Arbitration
<b>LED</b>	means Law Enforcement Directive (Directive (EU) 2016/680)
<b>Letter of Appointment</b>	The Letter of Appointment, substantially in the form set out in DPS Schedule 4, signed by both Parties and dated on the Effective Date.
<b>Losses</b>	Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.2.
<b>Malicious Software</b>	Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
<b>Materials</b>	Any questionnaires, discussion guides, transcripts, tables, data files, reports, pre-notifications, stimulus materials or any other material protected by Intellectual Property Rights

	or produced as part of a Project.
<b>Moral Rights</b>	All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world.
<b>New Expiry Date</b>	Has the meaning given to it in Clause 2.3
<b>Party</b>	Means a Party to this Agreement.
<b>Personal Data</b>	Personal Data has the same meaning as set out in the Data Protection Act 2018
<b>Prohibited Act</b>	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Customer or CCS a financial or other advantage to:</p> <ol style="list-style-type: none"> <li>induce that person to perform improperly a relevant function or activity</li> <li>reward that person for improper performance of a relevant function or activity</li> <li>to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>commit any offence: <ul style="list-style-type: none"> <li>under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>under legislation or common law concerning fraudulent acts; or</li> <li>defrauding, attempting to defraud or conspiring to defraud the Customer ; or</li> <li>any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;</li> </ul> </li> </ol>
<b>Project</b>	Any project(s) agreed between the Parties from time to time whereby the Supplier performs the Project which are the subject of this Contract and supplies Deliverables to the Customer as more fully described in the applicable Statement of Work;
<b>Project Commencement Date</b>	The date a Project will start, as set out in the relevant Statement of Work.
<b>Project Completion Date</b>	The date by which a Project is to be completed, as set out in the relevant Statement of Work.
<b>Project Notice Period</b>	The period of notice for cancellation of a Project as set out in the Statement of Work.
<b>Project Specific Materials</b>	<p>Means:</p> <p>Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>Intellectual Property Rights in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same.</p>
<b>Project Term</b>	The period during which the Project for each Project will be provided as specified in the applicable Statement of Work.
<b>Protective Measures</b>	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.
<b>Purchase Order Number</b>	The order number set out in the Letter of Appointment.
<b>Records</b>	The accounts and information maintained by the Supplier related to the operation and delivery of this Contract, including all expenditure which is reimbursable by the Customer, as are necessary for the provision of management information and to enable the Customer to conduct an audit as set out in Clause 21.
<b>Rectification Plan</b>	The rectification plan pursuant to the Rectification Plan Process.
<b>Rectification Plan Process</b>	The process set out in Clauses 5.8 to 5.14.
<b>Regulations</b>	The Public Contracts Regulations 2015.
<b>Relevant Requirements</b>	All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>Request for Information</b>	A request for information or an apparent request relating to this Contract or the provision of the Project or an apparent request for such information under the FOIA or the EIRs.
<b>Schedule</b>	Any Schedule attached to this Contract.
<b>Services</b>	The Project to be supplied by the Supplier under this Contract and in accordance with Section 2 of the DPS Agreement, as set out in the relevant Statement of Work. This includes the provision of Deliverables.
<b>Special Terms</b>	Any terms specifically designated as varying these Contract Terms or the terms of any schedule, as set out in the applicable Statement of Work.
<b>Standards</b>	Any: standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; <ul style="list-style-type: none"> <li>standards detailed in the specification in DPS Section 2 (Services and Key Performance Indicators);</li> <li>standards detailed by the Customer in the Letter of Appointment and any Statement of Work or agreed between the Parties from time to time;</li> <li>relevant Government codes of practice and guidance applicable from time to time i.e. including but not limited to Market Research Society (MRS) Code of Conduct and Social Research Association (SRA).</li> </ul>
<b>Statement of Work</b>	One or more documents describing the relevant Project(s) as agreed and signed by the parties and which shall comprise both the Customer Project Specification and the Supplier's Proposal (whether agreed as part of a Call for Competition or during the Term of this Contract).
<b>Sub-Contract</b>	A contract entered into between the Supplier and a Sub-Contractor.
<b>Sub-Contractor</b>	Any person or Supplier appointed by the Supplier to provide elements of the Project on behalf of the Supplier to the Customer.

<b>Sub-Processor</b>	Means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
<b>Supplier Affiliate</b>	Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Supplier, including as a subsidiary, parent or holding company.
<b>Supplier Confidential Information</b>	Any information that the Supplier gives to CCS or to Customer's that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however it is conveyed, that relates to the Supplier's business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all Intellectual Property Rights.
<b>Supplier Materials</b>	Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Supplier for the purposes of a Project, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Customer Materials).
<b>Supplier Proprietary Materials</b>	Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Supplier and which: - were in existence prior to the date on which it is intended to use them for a Project, or are created by or for the Supplier outside of a Project and which are intended to be reused across its business
<b>Supplier Proposal</b>	The Supplier's solution in response to the Customer's Project Specification, as set out in the Letter of Appointment or in any Statement of Work.
<b>Tender</b>	The tender submitted by the Supplier in response to the Invitation to Tender.
<b>Term</b>	The period from the Effective Date to the earlier of: <ul style="list-style-type: none"> <li>the Expiry Date or New Expiry Date; and</li> <li>any date of termination</li> </ul>
<b>Territory</b>	The United Kingdom, unless specified otherwise in the applicable Statement of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide.
<b>Third Party Materials</b>	Any Materials used in the Deliverables which are either commissioned by the Supplier from third parties or which have already been created by a third party and the Supplier proposes to use. Excludes software which is owned or licensed by a third party.
<b>Transparency Principles</b>	The principles set out at <a href="http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public">www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public</a> detailing the requirement for the proactive release of contract information under the Government's transparency commitment.
<b>Transparency Reports</b>	The information relating to the Project and performance of this Contract which the Supplier is required to provide to the CCS in accordance with its reporting requirements.
<b>Variation</b>	A change in this Contract that is formally agreed by both Parties, as detailed in Clause 10.2.
<b>Variation Form</b>	The template form to process and record variations to this

	Contract as set out at Schedule 5.
<b>Worker</b>	Any Supplier personnel to whom the Customer considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies See <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a>
<b>Working Day</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales.

## Schedule 2: Statement of works

Project	Evaluation of MoJ Youth Justice Reform Programme ✕
Project start date	Anticipated 1 <sup>st</sup> April 2020 (This will be varied due to Covid-19)
Contract Charges	The Customer shall pay the Supplier the sum of £245,795 for delivery of these Services, payable as per the payment schedule. For the avoidance of doubt, the Contract Charges shall be inclusive of all third party costs
Customer Materials	None
Key Individuals	<b>REDACTED</b>
Authorised Supplier Approver	<b>REDACTED</b> <b>REDACTED</b>

Service and deliverables

## Evaluation of MoJ Youth Justice Reform Programme

### Specification of requirements

#### Purpose

The Ministry of Justice (MoJ) is seeking a supplier to conduct both a process and impact evaluation of the “Youth Justice Reform Programme” (YJRP). The programme aims to reduce reoffending by children in the following ways:

- By making youth custody a place of safety, both for children and those who work there; and
- By improving the life chances of children in custody.

The programme will be implemented across publicly and privately run Young Offenders Institutions (YOIs), and Secure Training Centres (STCs) in England and Wales.

#### Introduction

- 1) This project is being commissioned by the Ministry of Justice (MoJ) Data and Analytical Services Directorate (DASD), working in conjunction with the Youth Custody Service (YCS). This project is being commissioned through the CCS Research Marketplace Dynamic Purchasing System, framework ref RM6018.
- 2) The MoJ is a major government department, at the heart of the justice system. It is a ministerial department, supported by 33 agencies and public bodies. The organisation works together with other government departments and agencies to bring the principles of justice to life for everyone in society. The YCS was created in September 2017 as a distinct arm of Her Majesty’s Prison and Probation Service (HMPPS). The YCS has operational responsibility for the day-to-day running of the youth custodial estate.
- 3) Each year millions of people use our services across the UK - including at courts, tribunals and prisons in England and Wales. We have a challenging agenda to provide a more effective, transparent, and responsive criminal justice system for victims and the public, as well as providing fair and simple routes to civil and family justice. We also work

to protect the public and reduce re-offending, by managing offenders from the point at which they are charged, to the end of their sentence, providing supervision and support as they are reintegrated into society.

- 4) This specification sets out the requirements for a suitably qualified and experienced Supplier to conduct research and analysis to contribute to a process and impact evaluation of the YJRP.

## Background to the Youth Estate

- 5) The YCS provides secure accommodation for children remanded or sentenced to custody. The accommodation comprises 5 YOIs (accommodating boys aged 15-17), 3 STCs (accommodating boys and girls aged 12-17), and 8 Secure Children's Homes (SCHs) (which between them accommodate the youngest and most vulnerable boys and girls in the estate aged 10-17). See '**Annex A – Flows through the Youth Justice System**' and '**Annex B – Key Youth Justice Statistics**' for a summary of the 2017/18 cohort.
- 6) Over recent years, the population of children in custody (aged 18 and under) has fallen substantially. There was a monthly average of just under 950 children in custody in 2018/19 (around 700 in YOIs, and around 150 in STCs). This is a 69% decrease in numbers over the previous ten years.<sup>1</sup>
- 7) Sixty five percent of children released from custody in 2016/17 reoffended within a year of release. Although this is 11 percentage points lower than for the 2006/07 cohort, the reoffending rate for children released from custody is still higher than the overall reoffending rate for children in 2017/18 (41%).<sup>2</sup>
- 8) Children in custody have particularly complex needs and have often been exposed to adverse childhood experiences: 25% of boys and girls surveyed in STCs, and 19% of boys surveyed in YOIs in 2017-18 considered themselves to have a disability (i.e. needing help with any long-term physical, mental or learning needs). Forty four percent of children surveyed in STCs, and 39% in YOIs in 2017-18 had been looked after children at some point.<sup>3</sup>
- 9) In 2017/18, there was an average of 24.7 assaults per 100 children in custody every month (almost 10 times the average monthly HMPPS rate). This is a 27% increase from the previous year, and a 142% increase compared to the rate five years prior. In 2017/18, there was an average of 12.5 incidents of self-harm per 100 children in custody every month (almost 3 times the average monthly HMPPS rate). This is a 40% increase from the previous year, and double the rate from five years prior.<sup>4</sup>
- 10) There is also a high proportion of BAME children in the estate (BAME children accounted for a monthly average of 49% of those in custody during 2018/19, compared to around 18% of the general population).<sup>5</sup>

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<sup>1</sup> Youth Custody Report: August 2019: <https://www.gov.uk/government/statistics/youth-custody-data>

<sup>2</sup> Youth Justice Statistics 2017 to 18, England Wales. Supplementary Tables 9.8: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774672/youth\\_justice\\_statistics\\_supplementary\\_tables\\_2017\\_2018.zip](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774672/youth_justice_statistics_supplementary_tables_2017_2018.zip)

<sup>3</sup> Children in Custody 2017-18, Appendices: <https://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2019/01/CYP-Appendices-2017-18.pdf>

<sup>4</sup> Youth Justice Statistics: 2017 to 18 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774866/youth\\_justice\\_statistics\\_bulletin\\_2017\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774866/youth_justice_statistics_bulletin_2017_2018.pdf)

<sup>5</sup> Youth Custody Report: August 2019: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774672/youth\\_justice\\_statistics\\_supplementary\\_tables\\_2017\\_2018.zip](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774672/youth_justice_statistics_supplementary_tables_2017_2018.zip)



- 11) The Ministry of Justice single departmental plan includes objectives to: Ensure that prisons are decent, safe and productive places to live and work; and Reduce rates of reoffending and improve life chances for offenders.<sup>6</sup>

## Background to the Youth Justice Reform Programme

- 12) In 2015, the then Secretary of State asked Charlie Taylor to conduct a review of the whole youth justice system. The Government published his report, alongside its own response, in December 2016.<sup>7</sup> In response to the review, the Government made a set of specific commitments to address immediate safety concerns in the secure estate, and improve youth custody. This included: putting education and health at the heart of youth custody, boosting frontline staffing numbers in YOIs by 20%, creating a new specialist Youth Justice Officer role, developing additional specialist support units for the most vulnerable young people, and establishing two pilot secure schools.
- 13) The YJRP was designed to deliver on these commitments, with an agreed budget of £31.5m to cover phase 1 (the current estate) from 2017-18 to 2019-20. Additional funding has now been granted to implement and sustain these reform activities into future years. The programme seeks to achieve these aims through the following framework of work strands:
- a) **An individualised approach:** an integrated framework of care encompassing education, health, and behaviour support into youth custody, to ensure each young person has had a full needs assessment and a tailored care and support plan. This will be delivered through two work strands; Education and Sport, and Safety, Wellbeing and Casework.
  - b) **A professional, specialist workforce:** creating a bigger, more resilient and stable workforce, more staff with specialist skills, culture change to those who want to work with young people, and a stronger focus on rehabilitation. This is being implemented by the Workforce work strand.
  - c) **Strong leadership and governance:** providing training and development, and creating a range of products and programmes, advice, guidance and support to embed a positive YCS culture that is child-centred and staff-focused. Improving leadership packages, offers and specific leadership development and innovation. Maintaining a consistent, coherent and complete perspective of the reform programme design. These reforms are being overseen by the Design Authority, Leadership and Culture work strand.
  - d) **The right estate:** smaller units with a therapeutic environment. This will be delivered via the creation of Secure Schools.
- 14) Work packages have been developed within each work strand. ‘**Annex C – Work Strand Descriptions for Youth Justice Reform Programme**’ provides an overview of key activities being currently being scoped or undertaken within work strands. Annex C should be treated as an illustration of the types of activities to be considered within the evaluation, and will be updated and expanded upon when a preferred bidder is selected. These descriptions are therefore subject to change as implementation of the YJRP progresses. Packages are being rolled out across the four publicly run YOIs initially (HMYOI Feltham, HMYOI Cookham Wood, HMYOI Werrington, and HMYOI Wetherby), with timetables tailored specifically to each site. Each site is therefore at a different point of implementation for each package. Subsequent implementation of the programme is planned across privately run sites, including HMYOI Parc and two STCs: Oakhill STC, and Rainsbrook STC. The evaluation will inform rollout of individual work packages at any of the remaining publicly run YOIs working to a different timetable, as well as potential roll out

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[ile/837106/youth-custody-report-august-2019.xlsx](file/837106/youth-custody-report-august-2019.xlsx) (note that figures may differ in most recent publication due to a change in methodology, and inclusion of extra data received).

<sup>6</sup> <https://www.gov.uk/government/publications/ministry-of-justice-single-departmental-plan/ministry-of-justice-single-departmental-plan--3>

<sup>7</sup> Review of Youth Justice System: Interim and final report from the review, and the government's response: <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>

across private sites in the future. SCHs are out of scope for the reform programme, and subsequently for this evaluation.

- 15) Medway STC is scheduled to be decommissioned to allow for the development of the first secure school (as part of work focusing on the future of the youth custody estate). Only changes to the current estate are within scope for this evaluation project, with Medway STC and the future Secure School out of scope.

## Project requirements

- 16) This document outlines the requirements for the evaluation of the YJRP. Bidders must indicate how they intend to meet these requirements.
- 17) The primary aims of the evaluation are:
- Process evaluation:** Provide evidence on the implementation and delivery of the Youth Justice Reform Programme.
  - Impact evaluation:** Robustly assess the impact of the Youth Justice Reform Programme on key outcomes of interest.

## Scope of requirements

- 18) The objectives of the evaluation are:
- Objective 1 (process evaluation):** Explore implementation and delivery of the reform programme. To work with the Authority (MoJ) and sites (YOIs and STCs) to collect evidence explaining how work packages are being operationalised, and to identify and explore challenges, enablers, and potential improvements.
  - Objective 2 (feasibility assessment):** To work with the Authority to assess the feasibility of using an experimental methodology with a counterfactual, and conducting statistical analysis to provide robust assessment of outcomes within an impact evaluation. Feasibility assessment due by the end of March 2020.
  - Objective 3 (impact evaluation):** Collect evidence and conduct analysis to understand any change in service users' and workforce outcomes and, if possible, to what extent they are attributable to work packages implemented as part of the reform programme.
- 19) To respond to this tender, prospective suppliers (bidders) must provide information on how they will meet objectives 1-3. This should include:
- A proposal for the process evaluation, including how this will be delivered in practice.
  - A plan for determining how they will work with the Authority and relevant partners to ascertain the extent to which a statistical assessment can be made of the impact of the reform programme on key outcome measures.
  - A proposal for an appropriate methodological approach for the impact evaluation, based on the information provided in this tender document.
- 20) The Supplier (successful bidder) will be required to ensure early findings are fed-back to the Authority to support further delivery.
- 21) The Supplier will be required to deliver a comprehensive and robust evidence base within the timeframe detailed in this Statement of Requirements.
- 22) This evaluation contract is expected to commence in February 2020 and will finish in July 2021. However, the Authority reserves the right to extend the contract by up to one year depending on policy needs, and securing further evaluation funding. In this case at least one month's notice will be given to the Supplier.
- 23) The following tasks are within the scope of requirement and the Supplier will:

- a) Co-design, with the Authority, the evaluation methodology. This will include agreeing the final methodological approach for the process evaluation, undertaking an assessment to determine the extent to which a robust impact evaluation with an appropriate counterfactual may be possible, and agreeing a final impact evaluation approach;
- b) In collaboration with the Authority, agree appropriate outcome measures for the evaluation;
- c) In collaboration with the Authority, agree appropriate samples, and recruit respondents. The Authority will facilitate by providing contact details for establishments, and breakdowns of staff roles at each site.
- d) Design quantitative and qualitative data collection tools to collect evidence on perceptions, views, and outcomes for service users (children in custody) and the workforce across the youth custodial estate, and for key relevant stakeholders (for example, health and education providers, MoJ HQ staff, and Youth Offending Teams (YOTs) or other staff from the Youth Justice Board (YJB)). All research materials must be signed off the by the Authority;
- e) Consider the qualitative and quantitative data alongside other data sources to answer the research objectives and feedback findings to the Authority. This will include monitoring data routinely collected at sites, and other sources such as the annual HMIP Children in Custody survey reports, Annual Staff Survey reports, and outputs of an existing evaluation commissioned by NHSE&I (NHS England and NHS Improvement), for example;
- f) Conduct fieldwork and agreed analyses to gain insights on the implementation and delivery process, and to determine the impact of the reform programme on service users and workforce outcomes;
- g) The Supplier must provide summaries of emerging findings during fieldwork, and is expected to attend Evaluation Steering Group Meetings. The supplier is expected to produce an interim report for internal use, and a final report of a publishable standard.

## **Out of Scope**

24)The following tasks are outside the scope of the requirement:

- a) Evaluation of Medway STC, Secure Schools, and Secure Children's Homes;
- b) Collection of Performance Management Information for the reform programme;
- c) The Evaluation Supplier will not be responsible for the holding and transferring of participants' personal details for the purposes of administrative data linking;
- d) A retrospective impact evaluation using MoJ data on reoffending;
- e) An economic evaluation to determine the costs and benefits of implementing the programme.

## **Aims and research questions**

25)The work shall seek to meet the three objectives of the evaluation and answer the following research questions by drawing on the full range of data available. The Supplier may suggest additional research questions.

26)It is imperative that the Supplier works in partnership with the Authority, youth estate establishments, and key stakeholders (such as the YCS). The tender should present

plans for how the Supplier will engage with sites and stakeholders to ensure an on-going dialogue with them throughout the course of the project.

- 27) Throughout the project, the Supplier must provide updates on the progress being made towards agreeing the appropriate methodology for the impact evaluation, highlighting any risks and challenges associated with the different designs (e.g. quasi experimental), whether and how these may be mitigated, and the recommendations they would make as a result.
- 28) The Supplier must provide a detailed evaluation project plan that takes into consideration the varying schedules of progress and delivery between sites, and the need to provide interim findings during the course of the evaluation period, an interim report, and final evaluation findings reported by June 2021.

**Objective 1: Explore implementation and delivery of the reform programme. To work with the Authority and sites to collect evidence explaining how work packages are being operationalised, and to identify and explore challenges, enablers, and potential improvements.**

- 29) Explore establishment staff and operator experiences of implementing changes, with a view to identifying process improvements ahead of any wider roll-out.
- 30) Explore child and young person (CYP) experiences through small-scale focus group/survey analysis.
- 31) Explore the roll out of packages (such as the flexible core-day), and assess how successfully these changes are able to become business as usual.
- 32) To identify what works well across the design, set up and delivery of the reform programme, where the challenges lie, and how these have been, or may be addressed. It is envisaged that fieldwork will need to be undertaken to capture early lessons to feed in to the implementation of the programme as well as understanding on-going delivery at different time points. This will need to account for service user demographics and needs, the outcomes achieved, and the perspectives of a range of stakeholders. This may include the following general questions, and will need to be tailored towards individual work strands:

#### Service delivery

- i. What process has been followed to develop work strands and work packages? Which stakeholder(s) had input into this? What constraints were there, and how have these been accounted for? What governance procedures are in place to ensure the programme is aligned, and has clearly specified targets and goals?
- ii. How have new services been procured, such as reviews of provision or new training packages? How has this been managed centrally, and how has this been managed at establishment level? What feedback mechanisms are in place to ensure high quality provision?
- iii. What is the approach to engaging and working with service users and frontline staff at establishments during design and roll-out?
- iv. How are establishments managing the services; what are their overall team structures, roles and staffing levels? Does this change across the lifetime of the programme?
- v. What are the service users' and workforce experiences of the programme roll-out? What do they identify as the enabling or disabling factors associated with their outcomes?

## Stakeholder working

- vi. To what extent and in what ways are key stakeholders such as YCS, YJB, NHS, local authorities, and education and sport providers within establishments engaging with the programme?
- vii. What are the experiences of accessing and building relationships with other service providers/stakeholders?
- viii. What changes, if any, are required to ways of working between stakeholders (including changes to contracts), and with service users to deliver the programme?

## Lessons learned

- i. What are the successes, challenges and lessons learned for the design and implementation of the programme? Are any specific to individual establishments?
- ii. What are the successes, challenges and lessons learned for the delivery and management of the programme? Do these differ across establishments?
- iii. What are the resources, capacity and partnership arrangements required to deliver the programme? Could delivery to the service users be improved?
- iv. Where services are near to the end of their funding period, how far have establishments got in working towards ensuring the changes become 'business as usual' (BAU), with sustained impacts for service users?
- v. What if any, unintended or unforeseen outcomes arise from the programme?

**Objective 2: To work with the Authority to assess the feasibility of using an experimental methodology with a counterfactual, and conducting statistical analysis to provide robust assessment of outcomes within an impact evaluation. Feasibility assessment due by the end of March 2020.**

Preliminary work must be undertaken by the Supplier to explore options for undertaking a quasi-experimental approach to impact evaluation. The design of the impact evaluation should include appropriate counterfactuals, where possible. Ideally, the impact evaluation should seek to provide evidence of distinct impacts for each work package. Work packages are being rolled out across all sites to varying timelines, meaning none of the sites can act as a single counterfactual for the entire programme. In addition, throughput in YOIs and STCs is relatively low, impacting on the available sample size during the evaluation period. Alternatives, such as an outcome evaluation, will be considered if an impact evaluation is not possible due to operational constraints.

33) Irrespective of method, the Authority expects the impact evaluation to provide evidence of the impact of the reform packages on health, safety & wellbeing, education and life chances, and workforce.

34) The methodology of the impact evaluation must be co-designed with the Authority and the support of the youth establishments.

35) Bidders must outline their experience of conducting quasi-experimental designs and analysis, and how they have worked in partnership with service providers and practitioners to deliver evaluations on the ground. Bidders must demonstrate their consideration of the expected key risks and challenges when carrying out the scoping and co-design work. Bidders must demonstrate their skills, knowledge and expertise in research methodology, co-design, working within the justice system or related areas, and working with CYP under 18 (and particularly those with complex needs). Bidders must also outline what, if anything, they expect from the Authority to assist with this process.

**Objective 3: Collect evidence and conduct analysis to understand any change in service users' and workforce outcomes and, if possible, to what extent they are attributable to work packages implemented as part of the reform programme.**

36) To understand differences in outcomes for CYP, throughout their time in custody, and post-release. This will include, but is not limited to, educational and learning progress/attainment, physical and mental health and wellbeing, behaviour and safety outcomes, and resettlement opportunities. This may include:

- i. What impacts work packages (such as enhanced support units, an integrated care framework approach, and improved staff training) have had on the safety and wellbeing of CYP, staff, providers, and visitors to secure establishments
- ii. What impacts changes to the core day (such as more flexibility, a broader educational and learning offer, improved sports offer, a tailored approach and site autonomy) have had on the physical and mental health and wellbeing of CYP, engagement, progress and attainment in learning, their relationships with other CYP and staff, and subsequent resettlement opportunities
- iii. What impacts changes such as the casework review, cultural changes, and cross sector engagement have had on the integrated care and service coordination offered to CYP, links to the community and subsequent resettlement for CYP

37) To show changes to establishment staff skill base and behaviours; in terms of approaches used for behaviour management, health and well-being interventions, casework, and resulting relationships with CYP

- i. What impacts increased staff numbers, and improved staff training offers have had on staff skill levels, confidence, morale, and behaviours at work. How has this impacted on their relationships with the CYP?
- ii. What impact the reform changes have had on the resilience and stability of the workforce over time

38) Has the programme achieved the expected outcomes; and are these outcomes seen across the estate?

- i. For whom has the programme been most effective? What factors, if any, influence the effectiveness of the programme? (e.g. support received, type of accommodations, underlying support needs of service users)

39) Dependent on the outcome of the feasibility phase, analysis of attribution of impact will be undertaken.

## **Methodology**

40) Bidders (potential suppliers) must outline in full their proposed methods and what information each approach described will provide to the evaluation.

41) Care must be taken to coordinate any client contact for the evaluation, covering both quantitative and qualitative data collection on outcomes, in order to minimise the risk of confusion about the research and the risk of overburdening participants.

42) The Authority has provided a suggested sample and methodology as follows:

- i. Two phases of fieldwork are anticipated. Phase 1 will likely focus more heavily on process implementation, with more of the sample coming from publicly run YOIs (where implementation begins earlier), than from privately run sites. The interim report, and progress with implementation will inform on the research direction and sample required for Phase 2.

- ii. Qualitative depth interviews with establishment staff/providers are anticipated at both phases of fieldwork, covering process and impact evaluation. We anticipate this to include a maximum of 10-12 interviews per publicly run YOI at each timepoint, made up of a mix of band 3-4 frontline staff, senior leaders (including the Governor and business change manager), education, sports, and healthcare providers. A smaller number of interviews are anticipated at private sites, particularly in phase 1 of fieldwork. The precise respondent mix across, and within sites, will be determined closer to fieldwork, depending on progress in rolling out different work packages at each establishment. It is envisaged that a core set of questions will be developed for each work strand, and those relevant to the particular respondent type, at the time of the interview/survey will be selected for use. Qualitative analysis methods will be finalised in collaboration with the Supplier, once the research methodology has been fully developed. It may include thematic analysis, using an analytical package such as NVivo, or other similar techniques and software.
- iii. Establishment staff surveys may be distributed to Band 3 and 4 members of staff to supplement qualitative work, by collecting wider views around perceived mechanisms of change, and subsequent impacts on their work and outcomes for CYP. Timings may be linked to fieldwork phases, or timed around implementation of specific work packages, as appropriate.
- iv. Qualitative research (depth interviews or focus groups) with CYP is expected at both fieldwork phases, covering all sites within scope of the reform programme. This should cover their perceptions of and feelings towards various components of the reform, for example, education and learning changes, their perceived progress, how prepared they feel for the future, and their attitudes towards future crime.
- v. Short CYP surveys may be administered at strategic points throughout the evaluation period. The timing will vary depending on work strand, for example, a survey could be designed for those entering and leaving custody, and a survey disseminate at key intervals during education sessions (such as at the end of a 6-week course).
- vi. Some sensitive topics will need to be explored with CYP, such as safety within the establishment, and their relationships with other CYP and staff. Bidders should consider the best methodology (or mixture of methods) to capture all necessary aspects of research, to provide the most in-depth and robust data, whilst retaining confidentiality and minimising risk.
- vii. Monitoring data will be made available to the Supplier, where possible. This will cover data from a variety of sources, such as education, and safety management information (MI) data, workforce data from HR tools, statistics on the number and demographics of CYP in each establishment, and potentially some data relating to resettlement of CYP. The Authority will work with key stakeholders and the information asset owners (IAO) to confirm available metrics, and facilitate any data sharing arrangements that are required with partner organisations (such as YCS or YJB).

43) Potential providers must provide details of how they will sample and seek input from a range of different stakeholders and client groups to ensure they are able to answer the questions set out above. The Authority and establishments will provide assistance to finalise the sample and provide contact details.

44) Bidders must set out the fieldwork methods to be used i.e. focus groups, interviews, surveys, and the expected methods of analyses as well as clearly setting out how their

plans will minimise the burden on clients and ensure the research is interactive and collaborative.

- 45) Table 1 provides suggested milestones, with two phases of fieldwork, but different and innovative approaches are welcomed and encouraged to deliver the requirements within the limited budget, as long as (a) they have benefit to answering the research questions and (b) robustness of approach is clearly demonstrated.
- 46) The Authority will input into and sign off all data collection tools. The supplier must build in time to incorporate feedback from the Authority into their planning process.
- 47) Bidders must demonstrate expertise in completing research using the proposed methods, including details of previous similar research where appropriate.
- 48) The Supplier will be expected to work closely with the Authority to plan and agree the detailed approach to the research and analyses. It is expected that the approach will be sensitive to potential geographical and contextual differences between the sites included in the reform programme.
- 49) The Supplier will ensure that data is collected with due respect to ethical considerations, with minimal burden on the supplier and stakeholders. Monitoring data can be made available to the Supplier where necessary and practical.
- 50) Bidders should outline an approach for the qualitative and quantitative process assessment, including how they will collect data to support this (e.g. collection method, potential sampling strategies, recruitment strategy, recording the data, access to research e.g. such as for children with low educational levels, or respondents with special educational needs and disabilities (SEND), or English as an Additional Language (EAL), as well as data analysis. Restrictions may vary between establishments in relation to the use of electronic devices during fieldwork, and supervision required for any CYP interviews. Bidders must consider this when defining their approach.

## **Outputs**

- 51) Over the period of the contract the Supplier must provide:
  - a) Weekly progress updates (via telephone or email); frequency may be adjusted subject to agreement between the Supplier and Authority.
  - b) A detailed research plan and project timeline (following a project inception meeting with MoJ)
  - c) Regularly updated Risk Register (reviewed monthly)
  - d) Research tools (e.g. data collection tools/ discussion guides/ surveys and protocols for consent in line with GDPR requirements)
  - e) Monthly updates for the evaluation steering group; to include emerging findings during fieldwork periods
  - f) Draft and finalised interim report of findings after phase one of fieldwork
  - g) Final report of publishable standard covering entire evaluation project
    - i) Outline of final report structure (by end of April 2021)
    - ii) Draft full report (by end of April 2021)
    - iii) In-person presentation of the results (May 2021)
    - iv) Final report of publishable standard (by end of June 2021)
  - h) Quantitative data set and cross tabs with both the interim and final report.



52) The Supplier will provide all written outputs in plain English. All written outputs must be quality assured and proof read by the Supplier before submission to the Authority. All outputs will be reviewed by the Authority. The structure of the final report must be agreed with the Authority prior to drafting. The final report will go through an academic peer review process. The Supplier will be required to amend the final report to address all reasonable comments provided via peer review, prior to the final report being agreed as the final output. Written reports must meet the standards set out in '**Annex D - MoJ Publications Guidance for external Authors**'. The final research report will be considered for publication on /GOV.UK. The Authority holds the final decision on the appropriate dissemination of findings.

## **Project management**

### **Supplier obligations**

- 53) The project manager nominated by the Supplier must have sufficient experience, seniority and time allocated to manage the project effectively.
- 54) It is expected that following the project initiation meeting, regular contact will take place between the Supplier and the Authority by telephone, email and face to face meetings. The frequency and format of contact will be agreed at the project inception meeting. This will be in addition to three evaluation steering group meetings.
- 55) The project will involve data collection with different stakeholders within the youth justice system, and it is desirable that the successful bidder demonstrate both criminal justice experience and experience of conducting research with children in the proposed research team, in order to inform the work. Bidders must provide information about the technical skills and experiences of the proposed research team. As a minimum, this should identify the project team that will be involved in working on the project, outlining their job/grade, skills, relevant experience, the number of days that they will spend on the project, and the nature of their involvement.
- 56) Bidders must also:
- Outline how the contract will be delivered in the event of staff changes during the project;
  - Provide details of how they will keep the Authority updated on the progress of the project;
  - Describe in detail how they will manage this project to ensure that it runs to time and budget; and
  - Identify risks associated with the successful completion of the research and how they plan to mitigate them.
- 57) **Consortium bids are welcomed** if the organisations are registered on the framework as a consortium, and bidders must clarify any relevant lines of responsibility among consortium members, and proposed arrangements for management and liaison with the project manager.

### **Reporting and governance arrangements**

- 58) The Authority will nominate a contract manager, who will be the Suppliers first point of contact during the project and will manage all administrative issues and contractual and technical matters. They, or a nominated replacement, will be available to deal with queries, be responsible for liaising with other colleagues during the course of the project, and ensure all parties are kept up to date on progress.
- 59) The Supplier will be obliged to keep the MoJ project manager informed of progress by means of regular updates as required. Arrangements will be agreed by the MoJ project manager and the Supplier, and will likely include a combination of telephone and email updates, and at least one face-to-face meeting; project inception meeting be held at the Ministry of Justice HQ (Westminster or Canary Wharf, London). The Authority shall reserve the right to call additional meetings when deemed necessary.

- 60) The Authority will set up an evaluation steering group, comprising government officials from MoJ/YCS and other relevant stakeholders. The Supplier will allow for **three** steering group meetings within the evaluation budget, to be held at Ministry of Justice HQ (London). It is crucial for the success of the evaluation that the steering group is fully involved in the project as it develops, and the Supplier will be obliged to provide updates at steering group meetings. Any issues emerging between meetings will be discussed between the MoJ project manager and the Supplier project manager.

### Quality assurance

- 61) All outputs shall be accurately drafted and proof-read before submission to the Authority. Poor quality outputs will be rejected by the Authority.
- 62) The Supplier must commit to undertaking **quality assurance of all deliverables**, and provide details of the quality assurance procedures they have in place. The Supplier will guarantee the accuracy of all outputs, and detail what quality assurance processes have been undertaken. All research tools and project outputs will be agreed with the Authority.

### Risks

- 63) Bidders must identify and assess the key risks associated with undertaking the research, and propose how these may be managed and overcome. The Supplier will develop a full risk register on award of the contract.

### Timetable

- 64) Bidders must confirm that they can meet the timetable below and outline how they will organise their team and research plan to do so. Alternative suggestions to how the work will be delivered are welcome, but a final quality assured report must be delivered by June 2021.
- 65) Suggested milestones are proposed in Table 1. If bidders feel the milestones presented in the project specification are not feasible, they should provide their views of what can be delivered and when.

**Table 1: Suggested project milestones**

DATE	SUGGESTED MILESTONES
Q1 2020	Contract awarded (w/c 2 <sup>nd</sup> March 2020)
	Project inception meeting (w/c 2 <sup>nd</sup> March 2020)
	Research plan submitted (End March 2020)
	Report on feasibility assessment of impact evaluation (End March 2020)
Q2 2020	Evaluation steering group meeting 1 (early April 2020)
	Phase 1 fieldwork materials finalised and signed off (End April 2020)
	Phase 1 fieldwork commences (May 2020)
Q3 2020	Phase 1 fieldwork completed (July 2020)
	Interim report following Phase 1 fieldwork (Sep 2020)
Q4 2020	Evaluation steering group meeting 2 (Early Oct 2020)

	Phase 2 fieldwork materials finalised and signed off (End Oct 2020)
	Phase 2 fieldwork commences (Nov 2020)
Q1 2021	Phase 2 fieldwork completed (Feb 2021)
Q2 2021	Draft final report (April 2021)
	Presentation of findings and evaluation steering group meeting 3 (May 2021)
	Final report for publication (by end of June 2021)

## Project costs

- 66) The maximum budget allocated for the evaluation project for the initial period outlined in this ITT is £250,000 (ex. VAT).
- 67) Bidders should outline the best bid they can offer.
- 68) Costs for work to meet Objectives 1 and 2 of the tender requirements will be at a fixed price. The pricing for Objective 3 will be based on the anticipated requirements outlined in this specification. Bidders must provide a rate card cost and estimated number of days for each role for the delivery of the objective. The day rates submitted for Objective 3 must be fixed, however, the number of days each role is required may be revised slightly based on the outcomes of objective 2, within the maximum budget allocation. Any revisions will need to be agreed with the Authority once the feasibility report has been supplied to meet Objective 2.
- 69) Bidders must submit clear costings for each aspect of Objectives 1 and 2 of the project. This must include a detailed breakdown of what activities each member of the research team will conduct with a specification of the time allocated and their daily rate; and any assumptions associated with the costs. Bidders must demonstrate how their bid provides additional value in meeting the research aims while containing costs.
- 70) Bidders must submit clear costings for each aspect of the project within the Pricing Schedule. This must include a detailed breakdown of what activities each member of the research team will conduct with a specification of the time allocated and their daily rate; and any assumptions associated with the costs. Any additional costs such as travel, accommodation, subsistence, postage & printing, equipment costs must also be detailed. Bidders must demonstrate how their bid provides additional value in meeting the research aims while containing costs.

## Payment milestones

- 71) Payment milestones will be tied to achievement of key stages of the contract. An example is provided in Table 2 but this can be adapted depending on methodology. A payment by results approach will be used.

**Table 2: Suggested payment milestones**

<b>Milestone and percentage of payment</b>	<b>Milestone</b>	<b>Expected date</b>
Milestone 1 (10%)	Receipt and approval of detailed project plan and feasibility report	March 2020
Milestone 2 (25%)	Fieldwork materials for phase 1 fieldwork signed off, phase 1 fieldwork complete	July 2020
Milestone 3 (20%)	Receipt and approval of final interim report, data file and tables, and sign off of all research materials for phase 2 fieldwork	October 2020
Milestone 4 (25%)	Completion of phase 2 fieldwork, receipt and sign off of final report outline	Feb 2021
Milestone 5 (20%)	Receipt of draft final report, data files and tables, presentation of findings delivered, receipt and sign off of final research report (of publishable standard)	June 2021

## **Ethical issues**

72) Bidders must detail the ethical implications of the evaluation design, fieldwork, data analyses and reporting of the evaluation, and how they will address these. Evaluation shall be in accordance with relevant professional guidelines on ethical evaluation practice (for example, Government Social Research (GSR) Professional Guidance: Ethical Assurance for Social Research in Government (<https://www.gov.uk/government/publications/ethical-assurance-guidance-for-social-research-in-government>)).

73) Bidders must detail how they will address, at a minimum, the following:

- Honesty to practitioners and participants about the purpose, methods and uses of the evaluation;
- Participant confidentiality and anonymity;
- The independence and impartiality of researchers in relation to the subject of evaluation; and
- Risks to researchers and participants (e.g. health and safety, conducting research with vulnerable respondent groups)

74) Bidders must detail how they will guarantee that all material considered as part of the proposed study shall be treated as confidential and that the anonymity of all parties involved shall be preserved entirely in any of the outputs. No material supplied to meet the objectives of the current study can be used by the Supplier for any other purposes (e.g. newspaper, journal articles,

interviews with or presentations to outside parties) unless express prior permission is granted by the Authority.

## Data protection

- 75) All data will be collated and stored in accordance with the Data Protection Act 1998, Freedom of Information Act 2000, the General Data Protection Regulation (Regulation (EU) 2016/679) and Government Economic and Social Research Team guidelines - <http://www.civilservice.gov.uk/networks/gsr>.<sup>8</sup> All published output from the evaluation will be anonymous.
- 76) Bidders shall demonstrate their processes for dealing with data securely and as a minimum how they will comply with data protection guidance. Proposals must cover how data will be transported / transferred, handled, analysed and stored including retention schedules.
- 77) In addition to the above, the successful bidder must be willing to comply with any reasonable requests in relation to meeting the security requirements of other data controllers (e.g. agencies within the participating areas).

## Security

- 78) The Supplier must ensure that all staff working on the project must have or be willing/able to obtain BPSS Clearance. Those staff who will visit youth establishments must also hold or be willing/able to obtain Enhanced Disclosure and Barring Service (DBS) Certification prior to commencing fieldwork, as set out in '**Annex E – MOJ Contractor personnel security requirements**'.

## Response

- 79) The response (tender) must be limited to **10,000 words (and no longer than 25 pages)** exclusive of references, footnotes, costing tables and annexes. Only the following can be placed into the annexes: copies of your organizations ethical, quality assurance, and data security policies. Any other annexed material shall be disregarded. Do not insert hyperlinks directing to further information; only information presented within the response document and annexes will be considered when assessing bid. The response must include:
- How the work will be conducted and how the listed aims will be met;
    - This should include a clear methodology for sampling, fieldwork completion, and analysis
  - An itemised outline timetable of the stages of work;
  - Project management and reporting techniques;
  - Details of the project team that will be involved in working on the project, outlining their grade, number of days on the project, skills, experience and nature of their involvement in the research;
    - Give examples of previous evaluations the project team have worked on, projects involving research in prisons, projects involving research with children, and work on previous publications.
  - A register of the main risks and planned mitigating actions, including RAG ratings for likelihood and impact; ensure the following are covered within this:

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<sup>8</sup> See information under GSR Code: Products i.e. legal and ethical subsection.

- How the contract will be delivered in the event of staff changes during the project;
- Details of the quality assurance procedures in place;
- Details of any ethical issues, and data protection relevant to the proposal and how these will be addressed;
- Clear separate costings for each aspect of the project including a detailed breakdown of what activities each member of the research team will conduct with a specification of the time allocated and their daily rate, and any assumptions associated with the costs.
- Bids must be received by **13:00 (1:00pm) on Friday 7<sup>th</sup> February 2020**. Bids received after this deadline will not be evaluated.

## Tender evaluation

80) Bidders must answer the mandatory questions set out in Table 3, and provide the specified evidence where requested. **If bidders answer 'no' and cannot provide evidence of steps being taken to comply (where appropriate), bids will fail.** Copies of ethical guidance, quality assurance policies, and data security policies may be placed as an Annex and excluded from the maximum word count and page limit specified for the bid.

**Table 3: Mandatory questions**

	<b>Key Participation Requirements</b> The following questions are Yes/No questions and will dictate what evidence needs to be provided. If you answer 'no' and cannot provide evidence of steps being taken to comply, bids will fail.	<b>Maximum Score)</b>
1	<b>Do you have ethical guidance for your organisation?</b>  If yes – please provide a copy of the guidance If no – please provide evidence of processes in place to consider the ethical implications of your work	Yes / No  Pass / Fail
2	<b>Do you have a quality assurance policy in place?</b>  If yes – please provide a copy of the guidance If no – please provide evidence of processes in place to quality assure all work undertaken and outputs produced	Yes / No  Pass / Fail
3	<b>Are all those who would be working on the project already BPSS cleared or prepared to undergo BPSS clearance?</b>  If yes – Pass If no – Fail	Yes / No
4	<b>Will all researchers conducting fieldwork within the youth estate hold, or be prepared to undergo Enhanced DBS clearance?</b>	Yes / No

	<b>Key Participation Requirements</b> The following questions are Yes/No questions and will dictate what evidence needs to be provided. If you answer 'no' and cannot provide evidence of steps being taken to comply, bids will fail.	<b>Maximum Score)</b>
	If yes – Pass If no – Fail	
5	<b>Does your organisation have a data security policy?</b>	Yes / No
	If yes – please provide details If no – please provide evidence of how you ensure your data is handled and stored in accordance with GDPR	Pass / Fail

81) This evaluation is being commissioned via the CCS framework RM6018, Research Marketplace Dynamic Purchasing System. Proposals will be evaluated by an evaluation panel using the weightings detailed in Table 4:

**Table 4: Tender evaluation weighting**

<b>Evaluation Criteria</b>	<b>Criteria Weighting %</b>
Quality in written bid	60%
Price	20%
Quality of presentation	20%
Total	100%

82) The Quality assessment criterion will be further broken down as detailed in Table 5. Suppliers who can demonstrate particular skills, expertise or added value will receive higher marks.

**Table 5: Quality Assessment Criteria**

	<b>Main Criteria</b>	<b>Maximum Criteria score ('Weight')</b>
1	<b>Understanding of the research and analysis requirement</b> Evidence of understanding the policy context and the research requirements, (including the subject area, relevant legal and ethical issues).	15%
2	<b>Proposed methodology</b> Evidence of the robustness and suitability of the proposed approach for meeting the project aims and	35%

	<b>Main Criteria</b>	<b>Maximum Criteria score (‘Weight’)</b>
	research questions, including details of the number and type of fieldwork components, the type of stakeholder (research participants) and the purpose and method of data collection. All assumptions underlying the suggested methodological approach should be explained in full. Please make clear any ethical issues which may arise and how you’d deal with them; detail how confidentiality and anonymity will be managed, and any additional considerations for research with vulnerable participants.	
3	<p><b>Knowledge and expertise of design and delivery</b></p> <p>Evidence of research skills required within the research team to undertake the different elements of the evaluation; expertise in using the proposed research and analysis methodologies, and evidence of producing high quality written reports to a publishable standard.</p> <p>Evidence of knowledge and experience of the research team in conducting research on related topic areas. This includes experience of the practicalities of undertaking research in the secure youth estate, or similar environments. It is desirable to have experience of conducting research the secure estate, and conducting research with children; please provide evidence.</p> <p>Please provide relevant examples of previous projects research team have worked on, indicating what knowledge, skills, or experience were gained.</p>	35%
4	<p><b>Project management</b></p> <p>Adequacy of the proposed project team to meet the evaluation requirements and complete outputs on time and to sufficient quality; including quality assurance, proposed resourcing allocation and timelines.</p> <p>Adequacy of risk management plans and explanation of how risks will be identified and assessed.</p> <p>Bidders must:</p> <ol style="list-style-type: none"> <li>Outline how the contract will be delivered in the event of staff changes during the project;</li> <li>Provide details of how they will keep the Authority updated on the progress of the project;</li> </ol>	15%



	<b>Main Criteria</b>	<b>Maximum Criteria score (‘Weight’)</b>
	<ul style="list-style-type: none"> <li>c. Provide details of the project management to be used, including the internal team management structure;</li> <li>d. Describe with sufficient detail how they will manage this project to ensure that it runs to time and budget; and</li> <li>e. Identify risks associated with the successful completion of the research and how they plan to mitigate them.</li> </ul>	
	<b>TOTAL</b>	<b>100%</b>

83) The quality criteria will be assessed initially based on written responses, and again after presentations. The tender evaluation panel will be given the following guide for scoring the bids to achieve consistency across scorers. Each criterion will be worth a maximum of 5 marks, and will be scored on the following spectrum from “Unacceptable” (0) to “Excellent” (5). Definitions of what constitutes these are described in more detail in Table 6.

**Table 6: Quality Scoring Criteria**

<b>Score</b>	<b>Assessment</b>	<b>Interpretation</b>
100	Excellent	Exceeds the requirement. Exceptional demonstration by the bidder of the relevant ability, understanding, experience, skills, resource and quality measures required. Evidence identifies factors that will offer significant added value.
80	Good	Satisfies the requirement and offers some additional benefits. Above average demonstration by the bidder of the relevant ability, understanding, experience, skills, resource and quality measures required. Evidence identifies factors that will offer some added value.
60	Acceptable	Satisfies the requirement. Demonstration by the bidder of the relevant ability, understanding, experience, skills, resource and quality measures required.
40	Minor reservation	Satisfies the requirement with minor reservations. Some minor reservations about the bidder’s relevant ability understanding, experience, skills, resources and quality measures required.

Score	Assessment	Interpretation
20	Major Reservations	Satisfies the requirement but with major reservations. Serious concerns about the bidder's relevant ability, understanding, experience, skills, resources and quality measures required.
0	Unacceptable	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the bidder has the relevant ability, understanding, experience, skills, resources and quality measures required. Little or no evidence to support the response.

84) Panel members will be allowed to score using only the scores outlined in Table 6 (0 to 100 marks, intervals of 20) for the particular question - whatever they think is most appropriate for each criterion.

85) A moderation meeting will take place between the evaluation panel, with a representative from the commercial team present to oversee proceedings, in order to determine an agreed moderated score for each question.

86) The mark awarded for each criterion will then be multiplied by the relevant weighting to achieve the weighted score for that question.

87) Any successful provider must have met or exceeded the quality threshold (achieved a minimum score of 60, with no individual scores of 20 or lower).

88) Price will be assessed using the total project costs. Total weighting for price will be 20%. Bids will be ranked with the highest score awarded to the bid with the lowest overall total project cost. Cost scoring methodology in Table 7

**Table 7: Cost scoring methodology**

Cost compared to other bids received	Score
Lowest cost	100%
0.1 – 4.9% above lowest cost	95%
5 – 9.9% above lowest cost	90%
10 – 14.9%	85%
15 – 19.9%	80%
Scoring continues as per above methodology	

89) Once the Quality and Commercial (cost) elements have been evaluated suppliers will be informed if they have been successful in being shortlisted to the presentation stage. Presentations will take place with the 3 highest weighted scoring providers as long as

they are within 10% of the highest score. For clarity, should only 1 provider be within 10%, then only the highest scorer and the 1 provider within 10% will be invited to present. Should there be 4 providers within 10%, then only the top 3 will be invited to present.

- 90) Once evaluation has completed via this documented process, **the OVERALL winner will be the highest scoring bidder based on the combined (average) weighted scores for Quality of written response, quality of presentation, and Cost, who also meets the minimum overall quality score of at least 60, and does not have a score of 20 or below on any individual criteria.** The minimum quality score ensures that all reasonably compliant bids have the chance to succeed but that a bidder cannot win even with a very competitive price if there have been some concerns established with their technical bids.
- 91) **At the Tender Presentation stage bidders cannot fundamentally revise their proposals. Bidders may receive a request to clarify specific elements of the bid in advance of the presentation.** Presentations will be assessed solely on the basis of the evidence in their presentation, using the quality and scoring criteria in Tables 5 and 6. The OVERALL winner will be the highest scoring bidder based on the new combined weighted scores for Quality of written bid, Cost, and quality of presentation, who also meets the minimum quality score of at least 60.
- 92) Presentations are currently scheduled for the week commencing **24<sup>th</sup> February 2020**, and will take place at the Ministry of Justice, Floor 3, 10 South Colonnade, London E14 4QQ. **The Authority reserves the right to cancel this part of the exercise if it is not deemed necessary.**
- 93) The Authority reserves the right not to award a contract. There is no guarantee of any business as a result of this further competition and we will not be held accountable for any costs to the bidder as a result of this exercise. The contract award and future payment is dependent on the programme progressing as planned.
- 94) The indicative procurement timescales are detailed in Table 8.

**Table 8. Indicative Procurement Timescales**

Invitation to Tender issued	W/c 6 <sup>th</sup> January 2020
Deadline for submission of clarification questions	1pm 24 <sup>th</sup> January 2020
Deadline for submission of bids	1pm 7 <sup>th</sup> February 2020
Evaluation of bids	W/c 10 <sup>th</sup> February 2019
Tender presentations (If required)	W/c 24 <sup>th</sup> February 2020
Providers notified of outcome (successful and unsuccessful)	By 28 <sup>th</sup> February 2020
Contract Awarded	W/c 9 <sup>th</sup> March 2020

## List of annexes

Annex A: Flows through the Youth Justice System

Annex B: Key Youth Justice Statistics

Annex C: Work Strand Descriptions for Youth Justice Reform Programme

Annex D: MoJ Publications Guidance for External Authors

Annex E: MoJ Contractor Personnel Security Requirements

HMI Probation and the MoJ reserve the right to cancel this further competition at any stage. There is no guarantee of any work as a result of this exercise, and we will not be liable for any costs incurred by any supplier in the process of constructing or submitting a bid in response to this procurement.

We reserve the right not to award this further competition should the bids received not meet the requirements or standards expected.

As Supplier Authorised Approver for and on behalf of

Get The Data [Supplier] **REDACTED**

Date **REDACTED**

Signed by **REDACTED**

As Customer Authorised Approver for and on behalf of

Ministry of Justice [Customer] **REDACTED**

Date **REDACTED**

Signed by **REDACTED**

## **SCHEDULE 3: STAFF TRANSFER**

### **1. DEFINITIONS**

In this Contract Schedule 3, the following definitions shall apply:

<b>“Admission Agreement”</b>	The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Employee Liabilities”</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"><li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li><li>(b) unfair, wrongful or constructive dismissal compensation;</li><li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li><li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li><li>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</li><li>(f) employment claims whether in tort, contract or statute or otherwise;</li></ul> <p>any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>

<b>“Fair Deal Employees”</b>	those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
<b>“Former Supplier”</b>	any Supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Project (or any part of the Project) and shall include any sub-contractor of such Supplier (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
<b>“Notified Sub-Contractor”</b>	a Sub-Contractor identified in the Annex to this Contract Schedule 3 to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-Contractor”</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
<b>“Service Transfer”</b>	any transfer of the Project (or any part of the Project), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer;
<b>“Staffing Information”</b>	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all

applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, Supplier workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Supplier’s Final Supplier Personnel List”**

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**“Supplier’s Provisional Supplier Personnel List”**

a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Project or any relevant part of the Project which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**“Transferring Customer Employees”**

those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

2. Where a provision in this Contract Schedule 3 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.



## **PART A**

### **TRANSFERRING CUSTOMER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **3. RELEVANT TRANSFERS**

3.1 The Customer and the Supplier agree that:

the commencement of the provision of the Project or of each relevant part of the Project will be a Relevant Transfer in relation to the Transferring Customer Employees; and

as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.

3.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer ; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

#### **4. CUSTOMER INDEMNITIES**

4.1 Subject to Paragraph 4.2, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

4.1.1 any act or omission by the Customer occurring before the Relevant Transfer Date;

4.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Customer Employees; and/or

b) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;

4.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

4.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

relates to financial obligations arising before the Relevant Transfer Date; and

- b) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 4.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- 4.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 4.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 4.2 The indemnities in Paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
  - 4.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 4.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 4.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 4.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
  - 4.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such

other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 4.4 If an offer referred to in Paragraph 4.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 4.5 If by the end of the 15 Working Day period specified in Paragraph 4.3.2:
- 4.5.1 no such offer of employment has been made;
  - 4.5.2 such offer has been made but not accepted; or
  - 4.5.3 the situation has not otherwise been resolved,
  - 4.5.4 the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 4.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 4.3 to 4.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 4.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 4.7 The indemnity in Paragraph 4.6:
- 4.7.1 shall not apply to:
    - a) any claim for:
      - discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
      - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
      - any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
    - b) shall apply only where the notification referred to in Paragraph 4.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within 6 months of the Contract Commencement Date.
- 4.8 If any such person as is referred to in Paragraph 4.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 4.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

## 5. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 5.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Customer against any Employee Liabilities in respect of any Transferring Customer Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 5.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
  - 5.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - a) any collective agreement applicable to the Transferring Customer Employees; and/or
    - b) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 5.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 5.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 5.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;
  - 5.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - a) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
    - b) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- 5.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date; and
  - 5.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 5.2 The indemnities in Paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 5.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

## **6. INFORMATION**

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **7. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 7.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 7.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- 7.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 7.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

7.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

7.2.4 the New Fair Deal.

7.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 7.1 or 7.2 shall be agreed in accordance with the Variation Procedure.

## **8. PENSIONS**

The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex to PART A (PENSIONS).

## **ANNEX TO PART A: PENSIONS**

### **9. PARTICIPATION**

- 9.1 The Supplier undertakes to enter into the Admission Agreement.
- 9.2 The Supplier and the Customer :
  - 9.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 9.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
  - 9.2.3 notwithstanding Paragraph 9.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
  - 9.2.4 agree that the Customer may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 9.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

### **10. FUTURE SERVICE BENEFITS**

- 10.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 10.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 10.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **11. FUNDING**

- 11.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 11.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **12. PROVISION OF INFORMATION**

The Supplier and the Customer respectively undertake to each other:

- 12.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 12.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **13. INDEMNITY**

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **14. EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

### **15. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 15.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 15.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 15.3 for the period either:
  - 15.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Project; or
  - 15.3.2 after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the Approval of the Customer (such Approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.



## **PART B**

### **TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **16. RELEVANT TRANSFERS**

16.1 The Customer and the Supplier agree that:

16.1.1 the commencement of the provision of the Project or of any relevant part of the Project will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

16.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

16.2 Subject to Paragraph 6, the Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### **17. FORMER SUPPLIER INDEMNITIES**

17.1 Subject to Paragraphs 17.2 and 21, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

17.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;

17.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

17.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 17.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 17.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive;
- 17.1.6 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Former Supplier to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date; and
- 17.1.7 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 17.2 The indemnities in Paragraph 17.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
  - 17.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 17.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 17.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 17.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
  - 17.3.2 the Former Supplier may offer (or may procure that a third party may offer)

employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

17.4 If an offer referred to in Paragraph 17.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

17.4.1 If by the end of the fifteen (15) Working Day period specified in Paragraph 17.3.2:

17.4.2 no such offer of employment has been made;

17.4.3 such offer has been made but not accepted; or

17.4.4 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

17.5 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 17.3 to 17.5 and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 17.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

17.6 The indemnity in Paragraph 17.6:

17.6.1 shall not apply to:

a) any claim for:

- discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

17.6.2 shall apply only where the notification referred to in Paragraph 17.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Contract Commencement Date.

17.7 If any such person as is described in Paragraph 17.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 17.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be

imposed upon it under the Law.

## **18. SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 18.1 Subject to Paragraph 18.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier.
- 18.2 Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
  - 18.2.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
  - 18.2.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
    - b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 18.2.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 18.2.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 18.2.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;
  - 18.2.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
    - b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-

Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- c) a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and;
- d) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.

18.3 The indemnities in Paragraph 18.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

18.4 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

## **19. INFORMATION**

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 21, the Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **20. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

20.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- 20.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

- 20.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 20.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 20.1.4 the New Fair Deal

20.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 20.1 shall be agreed in accordance with the Variation Procedure.

## **21. PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **22. PENSIONS**

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

## **ANNEX to PART B: PENSIONS**

### **23. PARTICIPATION**

- 23.1 The Supplier undertakes to enter into the Admission Agreement.
- 23.2 The Supplier and the Customer :
  - 23.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 23.2.2 agree that the Customer is entitled to make arrangements with the body responsible for the Schemes for the Customer to be notified if the Supplier breaches the Admission Agreement;
  - 23.2.3 notwithstanding Paragraph 23.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches the Admission Agreement; and
  - 23.2.4 agree that the Customer may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 23.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

### **24. FUTURE SERVICE BENEFITS**

- 24.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 24.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 24.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 24.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **25. FUNDING**

- 25.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the



Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

- 25.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, claim to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

## **26. PROVISION OF INFORMATION**

The Supplier and the Customer respectively undertake to each other:

- 26.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 26.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## **27. INDEMNITY**

The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **28. EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

## **29. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 29.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 29.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 29.3 for the period either
- 29.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Project; or
- 29.3.2 after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the Approval of the Customer (such Approval not to be unreasonably

withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

**PART C:**  
**NO TRANSFER OF EMPLOYEES AT COMMENCEMENT  
OF SERVICES**

**30. PROCEDURE IN THE EVENT OF TRANSFER**

- 30.1 The Customer and the Supplier agree that the commencement of the provision of the Project or of any part of the Project will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 30.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 30.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
  - 30.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 30.3 If an offer referred to in Paragraph 30.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 30.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 30.2.2:
  - 30.4.1 no such offer of employment has been made;
  - 30.4.2 such offer has been made but not accepted; or
  - 30.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

**31. INDEMNITIES**

- 31.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 30.2 to 30.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 31.4, the Customer shall:
  - 31.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 30.2 made pursuant to the provisions of Paragraph 30.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - 31.1.2 subject to paragraph 32, procure that the Former Supplier indemnifies the

Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the former Supplier made pursuant to the provisions of Paragraph 30.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

31.2 If any such person as is described in Paragraph 30.2 is neither re employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 30.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

31.3 Where any person remains employed by the Supplier and/or any Sub-Contract pursuant to Paragraph 30.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

31.4 The indemnities in Paragraph 31.1:

31.4.1 shall not apply to:

a) any claim for:

- discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

31.4.2 shall apply only where the notification referred to in Paragraph 30.2.1 is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within 6 months of the Contract Commencement Date.

## **32. PROCUREMENT OBLIGATIONS**

Where in this Part C the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **PART D: EMPLOYMENT EXIT PROVISIONS**

### **33. PRE-SERVICE TRANSFER OBLIGATIONS**

- 33.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 33.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
  - 33.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
  - 33.1.3 the date which is twelve (12) months before the end of the Term; and
  - 33.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.
- 33.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 33.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 33.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 33.3 The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 33.1 and 33.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 33.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 33.1 and 33.2 shall be true and accurate in all material respects at the time of providing the information.
- 33.5 From the date of the earliest event referred to in Paragraph 33.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Project who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the Approval of the Customer (not to be unreasonably withheld or delayed):
- 33.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - 33.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

- 33.5.3 increase the proportion of working time spent on the Project (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 33.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 33.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Project (or the relevant part of the Project); or
- 33.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 33.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Project are organised, which shall include:

- 33.6.1 the numbers of employees engaged in providing the Project;
- 33.6.2 the percentage of time spent by each employee engaged in providing the Project; and
- 33.6.3 a description of the nature of the work undertaken by each employee by location.

- 33.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 33.7.1 the most recent month's copy pay slip data;
- 33.7.2 details of cumulative pay for tax and pension purposes;
- 33.7.3 details of cumulative tax paid;
- 33.7.4 tax code;
- 33.7.5 details of any voluntary deductions from pay; and
- 33.7.6 bank/building society account details for payroll purposes.

#### **34. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 34.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Project, the identity of the Supplier of the Project (or any part of

the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Project being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any Contract Terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

- 34.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 34.3 Subject to Paragraph 34.4, where a Relevant Transfer occurs the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 34.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
  - 34.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
    - a) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
  - 34.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - 34.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

relates to financial obligations arising on and before the Service Transfer Date; and

- b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 34.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 34.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 34.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 34.4 The indemnities in Paragraph 34.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 34.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
  - 34.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 34.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 34.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and



- 34.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 34.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 34.7 If after the fifteen (15) Working Day period specified in Paragraph 34.5.2 has elapsed:
- 34.7.1 no such offer of employment has been made;
- 34.7.2 such offer has been made but not accepted; or
- 34.7.3 the situation has not otherwise been resolved
- the Customer shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 34.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 34.5 to 34.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 34.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 34.9 The indemnity in Paragraph 34.8:
- 34.9.1 shall not apply to:
- a) any claim for:
- discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  - equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 34.9.2 shall apply only where the notification referred to in Paragraph 34.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 34.10 If any such person as is described in Paragraph 34.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 34.5 to 34.7, such person shall be treated as a Transferring Supplier Employee and the Replacement

Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

34.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

34.11.1 the Supplier and/or any Sub-Contractor; and

34.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

34.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

34.13 Subject to Paragraph 34.14, where a Relevant Transfer occurs the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

34.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;

34.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

a) any collective agreement applicable to the Transferring Supplier Employees; and/or

b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;

34.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

34.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working

conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

34.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

34.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

34.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and

14.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

34.14 The indemnities in Paragraph 34.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

## SCHEDULE 4:

### DISPUTE RESOLUTION PROCEDURE

1. Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The obligations of the Parties under this Contract will not be suspended, cease or be delayed during a dispute.
3. If any dispute arises between the Parties in connection with this Contract or any Project, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute.
4. If the Parties have not settled the Dispute in accordance with paragraph 3 above, they must notify CCS of the details of the Dispute and escalate the dispute to the Customer Representative, the Supplier Representative and CCS who will have a further 10 Working Days from the date of escalation to settle the dispute.
5. If the dispute cannot be resolved by the Parties within 30 Working Days of the notice given under paragraph 3 above, they must refer it to mediation, unless the Customer considers that the dispute is not suitable for resolution by mediation.
6. If a dispute is referred to mediation, the Parties must:
  - appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment. If they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution to appoint a Mediator
  - meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged
7. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
8. If the Parties reach a resolution, a written agreement may be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
9. If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. This opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
10. If the Parties fail to reach a resolution within 90 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless the Customer considers that it is not suitable for resolution by arbitration.
11. If a dispute is referred to arbitration, the Parties must comply with the following provisions:
  - the arbitration will be governed by the provisions of the Arbitration Act 1996

deemed to be incorporated into this Contract. It however there is any conflict between the LCIA procedural rules and this Contract, this Contract will prevail

- the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
- the tribunal shall consist of a sole arbitrator to be agreed by the Parties
- if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
- the arbitration proceedings shall take place in a location to be agreed between the Parties.

## SCHEDULE 5: VARIATION FORM

No of Letter of Appointment being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Customer ] ("**the Customer** ")

and

[insert name of Supplier] ("**the Supplier**")

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

***[Insert details of the Variation]***

2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## **SCHEDULE 6: CONTRACT CHARGES**

### **1. General provisions**

1.1 This Contract Schedule 6 details:

- 1.1.1 the Contract Charges for the Project under this Contract ; and
- 1.1.2 the procedure applicable to any adjustments of the Contract Charges.

### **2. Contract Charges**

2.1 The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Contract Schedule 6.

2.2 The Supplier acknowledges and agrees that:

- 2.2.1 in accordance with paragraph 1 (General Provisions) and of this Contract Schedule 6 (Contract Charges), the Contract Charges can in no event exceed the Contract Charges set out in Annex 1 to Contract Schedule 6 (Contract Charges); and
- 2.2.2 The Contract Charges comprise of the maximum daily rates for each category of the Supplier staff and (in each case exclusive of VAT) are as set out in Annex 1 of this Contract Schedule 6.
- 2.2.3 Daily rates are based on a Working Day consisting of eight (8) hours (excluding break).
- 2.2.4 Unless a Customer agrees otherwise under the terms of a specific Contract, the Supplier cannot charge for any more than eight (8) working hours in one (1) day.
- 2.2.5 All daily rates are inclusive of travel, subsistence, lodging and related expenses. Any additional Charges shall be calculated as detailed in the Letter of Appointment as detailed in DPS Schedule 4 (Letter of Appointment) and agreed with the Customer. The Supplier shall provide invoices detailing additional Charges to the Customer.

### **3. Adjustment of Contract Charges**

3.1 The Contract Charges shall only be varied:

- 3.1.1 due to a specific change in Law in relation to which the Parties agrees that a change is required to all of part of the Contract Charges in accordance with Clause 11.4 of the DPS Agreement, or
- 3.1.2 where a review of the Contract Charges is agreed by the Parties, in accordance with the provisions of Section 4 of this Contract Schedule 6.

#### **4. Review of the Contract Charges**

- 4.1 If the Supplier determines that some or all of the Contract Charges need to be increased, the Supplier shall notify the Customer in writing of its request to increase some or all of the Contract Charges. It must provide the Customer with a list of the Contract Charges it wishes to vary together with written evidence of the justification for the requested increase. This should include:
- 4.1.1 a breakdown of the profit and cost components that comprise the relevant rate
  - 4.1.2 details of the movement in the different identified cost components of the relevant rate
  - 4.1.3 reasons for the movement in the different identified cost components of the relevant rate
  - 4.1.4 evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components, and
  - 4.1.5 the date on which the Supplier wants the Variation to come into force
- 4.2 The Customer may in its absolute discretion, grant or refuse the Supplier's request (in whole or in part).

#### **5. Implementation of adjusted Contract Charges**

- 5.1 Variations to the Contract Charges will take effect on a date determined by the Customer.
- 5.2 Variations do not affect the Charges payable to a Customer under a Contract which had already been agreed before the variation takes effect.
- 5.3 Any variation to the Charges payable under a Contract must be agreed in writing between the Supplier and the relevant Customer and implemented in accordance with the provisions applicable to the Contract.

#### **6 E-commerce transactions with central government bodies**

- 6.1 The Supplier accepts e-commerce as the preferred transacting model for all Government's purchasing transactions.



## **ANNEX 1 – CONTRACT CHARGES**

**REDACTED**

## SCHEDULE 7: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	The Youth Justice Reform Programme, covering reform packages regarding Safety and wellbeing, Workforce, Education, and Leadership and Culture across the Youth Custodial Estate (YOIs and STCs).
Duration of the processing	For the length of the contract
Nature and purposes of the processing	To evaluate progress and impact of implementing the package or reform activities across the youth custodial estate.
Type of Personal Data	<p>Data will consist of quantitative and qualitative survey responses, qualitative in-depth interview data, and qualitative observational data. These data will include personal opinions and views of staff and children within the secure estate.</p> <p>Quantitative MI data will be processed to assess the impact of reform activities on staff, provider, and child outcomes.</p> <p>Demographic data relating to staff and child cohorts will be provided to assist in respondent sampling, and analysis of impacts.</p>
Categories of Data Subject	To be confirmed with the Youth Custody Service (YCS) and Youth Justice Board (YJB)

<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>All data will be collated, stored, and destroyed by the supplier in accordance with the Data Protection Act 1998, Freedom of Information Act 2000, the General Data Protection Regulation (Regulation (EU) 2016/679) and Government Economic and Social Research Team guidelines.</p> <p>The Supplier must also adhere to any additional data sharing procedures required by MoJ partners providing personal data for evaluation purposes (such as YCS, YJB, NHS).</p>
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## **SCHEDULE 8: ADDITIONAL CLAUSES**