

## ANNEX B

### PART D – CONDITIONS OF CONTRACT FOR SERVICES

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#### **D1. DEFINITIONS**

In the Contract the following words shall have the following meanings unless the context requires otherwise:

“Acceptance” means the written acceptance of the Home Office’s Contract Manager given in accordance with any acceptance procedures set out in the Contract;

“Deliverables” means anything specified in the Contract to be delivered by the Contractor to the Home Office under the Contract including reports, manuals and other documentation and outputs;

“Key Personnel” means any of the Contractor’s Personnel named in the Contract as key personnel or any of the Contractor’s Personnel who the Home Office notifies to the Contractor in writing are to be regarded as key personnel;

“Premises” means the location(s) where the Services are to be performed as specified in the Contract;

“Services” means the services to be provided as specified in the Contract including the production of any Deliverables and any planning, preliminary and preparatory work.

## **D2. THE SERVICES**

- D2.1 The Contractor's Personnel shall be appropriately experienced, qualified, trained and security cleared and shall undertake the Services with reasonable skill, care and diligence in accordance with the Contract and good industry practice and to the reasonable satisfaction of the Home Office.
- D2.2 The Contractor shall supervise and manage the Contractor's Personnel properly.
- D2.3 If any of the Contractor's Personnel is not a British citizen, Swiss national or a national of a country in the European Economic Area, the Contractor shall ensure that the Contractor's Personnel has the necessary Home Office permission to work and shall ensure compliance with the Asylum and Immigration Act 1996.
- D2.4 Timely provision of the Services shall be of the essence of the Contract and failure to commence or provide the Services within the time promised or specified shall enable the Home Office (at the Home Office's option acting reasonably) to release itself from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract, in either case without additional cost and without prejudice to the Home Office's other rights and remedies.

## **D3. VARIATION OF THE SERVICES**

- D3.1 The Home Office reserves the right from time to time during the term of the Contract in accordance with any change control procedures set out in the Contract to add to, omit, or otherwise vary the Services including the order in which the Services are to be delivered or the locations where the Services are to be provided and any alteration to the prices or completion date arising by reason of such variation shall be agreed between the Parties and shall properly and fairly reflect the nature and extent of the variation in all the circumstances.

## **D4. CONTRACTOR'S PERSONNEL**

- D4.1 The Contractor shall make the Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of the Home Office, such approval not to be unreasonably withheld. Whenever, for any reason, the Key Personnel are unavailable for the performance of the Services, the Contractor shall as soon as reasonably practicable substitute suitably qualified replacements acceptable to the Home Office.
- D4.2 If and when requested by the Home Office, the Contractor shall provide the Home Office with a list of the names of all the Contractor's Personnel who may at any time be concerned with the provision of the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity, qualifications,

experience and other supporting evidence as the Home Office may reasonably require.

- D4.3 The Contractor shall ensure that staff shall be selected for suitability to work with sensitive information such as the personal details of people engaging with the Inquiry and potential information that may be used as evidence for the Inquiry. The suitability of personnel and the processes for the recruitment of new personnel shall be mutually agreed between the Inquiry and the Contractor and the Contractor shall provide the Inquiry with any updates on either new or existing personnel required in order to maintain security.
- D4.4 Where the Home Office reasonably requires by notice to the Contractor that any of the Contractor's Personnel is not to become involved in or is to be removed from involvement in the Services, the Contractor shall take all reasonable steps to comply with such notice. The Contractor shall replace any such person with someone with equivalent experience, qualifications, training and security clearance.
- D4.5 The decision of the Home Office as to whether any person is not to become involved in or is to be removed from involvement in the Services, as to the designation or approval of Key Personnel and as to whether the Contractor has furnished the information or taken the steps required by this Condition D4 shall be final and conclusive.
- D4.6 The Contractor shall:
- D4.6.1 take instructions and all directions and, where appropriate, receive the Home Office's decisions only through the Home Office's Contract Manager;
  - D4.6.2 act in accordance with all reasonable instructions and directions in carrying out the Services;
  - D4.6.3 keep the Home Office's Contract Manager advised on all matters materially related to its performance of the Services according to reporting formats specified by the Home Office;
  - D4.6.4 answer all reasonable enquiries received from the Home Office's Contract Manager;
  - D4.6.5 attend or be represented at regular meetings as requested by the Home Office from time to time.
- D4.7 The Contractor shall ensure that leave is taken by the Key Personnel on dates which do not interfere with the proper delivery of the Services and shall consult with the Home Office's Contract Manager before allowing leave to be taken.
- D4.8 The Contractor shall not vary the Contract prices at anytime during the term of the Contract including any extension due to the promotion of any of the Contractor Personnel.
- D4.9 The Contractor shall bear the cost of any notice, instruction or decision of the Home Office under this Condition D4.

## **D5. MEETINGS AND REPORTING**

- D5.1 The Contractor and the Contractor's Personnel shall upon receipt of reasonable notice and during office hours attend all meetings arranged by the Home Office's Contract Manager for the discussion of matters connected with the performance of the Services.
- D5.2 The Contractor and the Contractor's Personnel shall provide the Home Office's Contract Manager with such reports of the Services and copies of the Deliverables at such intervals and in such form as the Home Office may from time to time reasonably require.

## **D6. EQUIPMENT, PLANT AND MATERIALS**

- D6.1 The Contractor shall provide all equipment, plant and materials necessary for the provision of the Services except where otherwise agreed in the Contract.
- D6.2 In the event that the Contractor procures goods or services including equipment from third parties on behalf of the Home Office, it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a contracting authority within the meaning of those regulations and in accordance with all other applicable domestic and European law.
- D6.3 Where the Home Office in accordance with the Contract issues equipment, plant or materials free of charge to the Contractor such equipment, plant or materials shall be and remain the property of the Home Office. The Contractor shall not in any circumstances have a lien on the equipment, plant or materials and shall take all steps necessary to ensure that the title of the Home Office and the exclusion of any lien are brought to the attention of any third party dealing with the equipment, plant and materials.
- D6.4 The Contractor shall maintain all equipment, plant and materials provided by the Home Office in good order and condition and shall use such equipment, plant and materials solely in connection with the Contract. The Contractor shall notify the Home Office of any surplus materials remaining after completion of the Services and shall dispose of them as the Home Office may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or the Contractor's Personnel shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Home Office, the Contractor shall deliver up such equipment, plant or materials whether processed or not to the Home Office on demand.

## **D7. INSPECTION**

- D7.1 The Home Office shall be entitled to inspect and examine the performance of the Services and the Contractor shall afford all reasonable access, facilities and assistance required by the Home Office for any inspection and examination free of charge.
- D7.2 No failure to make complaint at the time of such inspection and no approval given during or after such inspections shall constitute a waiver by the Home Office of any rights or remedies in respect of the Services.

## **D8. ACCEPTANCE PROCEDURE**

- D8.1 This Condition D8 shall apply in the absence of any specific acceptance procedures elsewhere in the Contract.
- D8.2 The Contractor shall make available any Deliverables to the Home Office's Contract Manager for Acceptance.
- D8.3 The Acceptance of a Deliverable shall be carried out by the Home Office with the co-operation of the Contractor, within 15 days (or such other period as the Parties may agree in writing) of the Contractor making the Deliverable available to the Home Office during which time the Home Office must determine whether the Deliverable meets the requirements defined and/or any acceptance criteria agreed in writing prior to the commencement of the acceptance procedure.
- D8.4 If it is determined that the Deliverable meets the requirements defined and/or any acceptance criteria agreed the Home Office shall promptly notify the Contractor in writing of its Acceptance.
- D8.5 If it is determined that the Deliverable, or any part of it, does not meet the requirements defined and/or any acceptance criteria agreed, the Home Office shall extend the acceptance period by 10 days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.
- D8.6 If, after the Home Office has extended the acceptance period pursuant to Clause D8.5 above, the acceptance has not been recorded as successful by the end of that period, the Home Office shall, have the right, without prejudice to its other rights and remedies:
- D8.6.1 to accept such part of the work as the Home Office may decide and pay a charge calculated on a pro rata basis therefor or such other charge as may be agreed between the Parties; or
- D8.6.2 to extend the acceptance period for a period or periods, specified by the Home Office, during which the Contractor shall correct the fault that caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.

## **D9. HOME OFFICE PREMISES**

- D9.1 This Condition D9 shall only apply where the Premises are provided by or on behalf of the Home Office.
- D9.2 Access to the Premises shall be made available to the Contractor free of charge and shall be used solely for the purposes of performing the Contract. The Contractor shall have use of the Premises as licensee.
- D9.3 Access to the Premises shall not be exclusive to the Contractor but shall be such as to enable the Contractor to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Home Office may reasonably require.
- D9.4 Where any of the Contractor's Personnel is replaced in accordance with D4 the Contractor shall take any steps reasonably required by the Home Office to prevent such Contractor's Personnel being admitted to the Premises.

- D9.6 The Contractor shall make no delivery of its equipment, plant or materials nor commence the Services on the Premises without the Home Office's Contract Manager's prior approval.
- D9.7 The Contractor shall maintain its items of equipment, plant and materials within the Premises in a safe, serviceable and clean condition.
- D9.8 All equipment, plant and materials brought onto the Premises by the Contractor shall be at the Contractor's own risk and the Home Office shall have no liability for any loss of or damage to the same unless the Contractor can demonstrate that such loss or damage was caused by the wilful act of the Home Office.
- D9.9 The Contractor shall provide for the haulage or carriage of its equipment, plant or materials to the Premises and the removal therefrom when no longer required at the Contractor's sole cost.
- D9.10 The Home Office shall have the power at any time during the Contract to order in writing that the Contractor:
- D9.10.1 remove from the Premises any of its equipment, plant or materials which in the opinion of the Home Office is either hazardous, noxious or not in accordance with the Contract; and
- D9.10.2 substitute proper and suitable equipment, plant and materials.
- D9.11 On completion of the Services the Contractor shall remove its equipment, plant and unused materials and shall clear away from the Premises all rubbish arising out the Services and leave the Premises in a neat and tidy condition.
- D9.12 The Contractor shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by the Contractor's Personnel other than fair wear and tear.
- D9.13 Continuity of electricity, heating, telephone, water supplies, stationery and sewerage ("Supplies") at the Premises is not guaranteed and no liability will be accepted by the Home Office for shut-down or restrictions due to any cause whatsoever.
- D9.14 The Contractor's Personnel shall ensure that the Premises are used with due regard for the need for the efficient use and conservation of Supplies and the Home Office shall not bear the costs of any use of such Supplies by the Contractor's Personnel which do not conform to the requirements of this Clause D9.14.

## **D10. HEALTH AND SAFETY AND SECURITY**

- D10.1 The Contractor shall notify the Home Office if the Services are hazardous to health or safety and of the precautions that should be taken in respect thereto.
- D10.2 The Home Office shall notify the Contractor of any special health and safety hazards which the Home Office becomes aware of in relation to the Premises, where the Premises are provided by or on behalf of the Home Office, which may affect the Contractor's performance of the Services. If the

Home Office notifies the Contractor of any special health and safety hazards the Contractor shall draw any such hazards to the attention of the Contractor's Personnel.

D10.3 The Contractor shall be responsible for the observance by itself and the Contractor's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Contractor's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Contractor and the Contractor's Personnel shall co-operate fully with the Home Office to ensure the proper discharge of these duties.

D10.4 Where the Premises are provided by or on behalf of the Contractor the Home Office shall be entitled to inspect the Premises to ensure they are appropriate for the provision of the Services.

D10.5 Accidents to the Contractor's Personnel at the Premises which ordinarily are required to be reported in accordance with the Health and Safety at Work Act 1974 shall be reported immediately to the Home Office's Contract Manager.

D10.6 The Home Office may undertake security and/or identity checks on any of the Contractor's Personnel requiring unescorted access to the Home Office's Premises or IT network. The Contractor and the Contractor's Personnel must comply with the Home Office's arrangements for undertaking security and identity checks.

## **D11. PAYMENT**

D11.1 This Condition D11 shall apply in the absence of any specific provision for payment elsewhere in the Contract.

D11.2 The Contractor shall submit a single, fully itemised invoice at the end of each calendar month in respect of the Services undertaken during that month unless the Contract specifies payment is due upon Acceptance of the Services or Deliverables in which case the Contractor shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.

D11.3 The invoice must clearly identify the Services and/or Deliverables to which the invoice relates.

## **D12. INTELLECTUAL PROPERTY RIGHTS**

D12.1 This Condition D12 shall apply in the absence of any specific provision for the allocation of Intellectual Property Rights between the Parties elsewhere in the Contract.

D12.2 All Intellectual Property Rights or other similar protection in any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material furnished to or made available to the Contractor by the Home Office or the Independent Inquiry Into Child Sexual Abuse pursuant to the Contract shall remain the property of the Home Office.

D12.3 All pre-existing Intellectual Property Rights or other similar protection in any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material existing prior to the date of the Contract date and furnished to or made available to the Home Office by the Contractor pursuant to the Contract shall remain the property of the Contractor. The Contractor hereby grants to the Home Office and the Crown a non-exclusive, royalty free, perpetual and irrevocable licence to use, reproduce, modify, adapt, amend, enhance and other deal with (and to authorise a third party on behalf of the Home Office or the Crown, such third party having signed a confidentiality undertaking, to use, reproduce, modify, adapt, amend, enhance and otherwise deal with) the Contractor's pre-existing Intellectual Property Rights for the Home Office or the Crown's own internal purposes, to allow the Home Office or the Crown to exploit the Intellectual Property Rights or similar generated under the Contract and for any other purposes specified in the Contract.

D12.4 All Deliverables, reports and other documents or similar and all Intellectual Property Rights or other similar protection arising out of the performance by the Contractor's Personnel of their duties hereunder are hereby assigned to and shall vest in the Home Office absolutely and the Contractor or the Contractor's Personnel shall enter into such documentation and perform such acts as the Home Office may request to properly vest such rights in the Home Office.

D12.5 The provisions of Condition D12 shall apply during the continuance of the Contract and after its expiry or termination howsoever arising.

### **D13. INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

D13.1 If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Home Office (not to be unreasonably withheld or delayed) either:

D13.1.1 modify any or all of the Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified or substituted Services; or

D13.1.2 procure a licence (at the Contractor's cost) to provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Home Office.

D13.2 The provisions of Condition D13 shall apply during the continuance of the Contract and after its expiry or termination howsoever arising.

### **D14. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")**

D14.1 The Contractor shall provide the Home Office, and/or any other person authorised by the Home Office who is to be invited to submit a tender in relation to the provision of similar Services, with such information (including any changes to and interpretations thereof) in connection with TUPE as the Home Office may require. The Contractor shall provide the information within 10 days of the Home Office's request.



D14.2 During the 8 month period preceding the expiry of the Contract or any notice period, the Contractor shall not without the prior written consent of the Home Office (not to be unreasonably withheld or delayed):

D14.2.1 materially amend the terms and conditions of employment of any employee whose work wholly or mainly falls within the scope of this Contract;

D14.2.2 materially increase the number of employees whose work (or any part of it) is undertaken for the purposes of this Contract; or

D14.2.3 move or deploy any Key Personnel away from the performance of the Services under this Contract.

## **D15. SOLICITING FOR EMPLOYMENT**

D15.1 Each Party to the Contract undertakes not to attempt to solicit nor procure the service or employment of employees of the other Party or persons engaged under a contract for services with the other Party during the term of the Contract and within six calendar months after the termination or expiry of the Contract without the prior written permission of the other Party.

D15.2 Clause D15.1 shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business. In such event, neither Party shall have any obligation or liability to the other by way of introductory or finder's fee.

## **D16. BUSINESS CONTINUITY PLANNING**

D16.1 the Home Office may require the Contractor to develop and agree with the Home Office a business continuity plan. Where so required the Contractor shall:

D16.1.1 in accordance with good industry practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of the Contractor to perform the Services in accordance with this Contract, including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain, pandemic and loss of Key Personnel; and

D16.1.2 keep the plans under review and make such changes, from time to time, as shall be required in accordance with good industry practice.

D16.2 The Home Office shall be entitled to review any business continuity plans developed under this Contract at any time and, at its sole discretion, make suggested changes or amendments to the plans which the Contractor, acting reasonably shall consider and, after consultation and agreement with the Home Office, put in place.

## **D17. EXIT AND SKILLS TRANSFER**

D17.1 The Home Office may require the Contractor to develop and agree with the Home Office an exit and skills transfer plan describing how the Services shall be handed over and appropriate skills transferred. Any such exit and skills transfer plan will be developed in line with the Home Office's requirements and updated through the term of the Contract.

**D18. NON-EXCLUSIVITY**

D18.1 The Home Office may at any time engage other persons to provide services of the same type as the Services.

**D19. BREAK**

D19.1 In addition to the Home Office's other rights to terminate the Contract the Home Office shall be entitled to terminate the Contract or any part thereof by giving to the Contractor not less than:

D19.1.1 15 Days notice to that effect where the term of the Contract is less than 90 Days.

D19.1.2 30 Days notice to that effect where the term of the contract is 90 Days or more.

D19.2 Where the Home Office terminates the Contract under Clause D19.1, the Home Office shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under D19.1.

D19.3 The Home Office shall not be liable under Clause D19.2 to pay any sum which:

D19.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

D19.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated in accordance with Clause D19.1.

