

## EQUALLY OURS

The Foundry | 17 Oval Way | London | SE11 5RR

Attn: [Redacted under FOIA Section 40, Personal Information]  
By email to: [Redacted under FOIA Section 40, Personal Information]

Date: 25<sup>th</sup> April 2022

Our ref: PR 60 2020

Dear [Redacted under FOIA Section 40, Personal Information]

### PROVISION OF RAPE AND SERIOUS SEXUAL OFFENCES RESEARCH, (RASSO)

Following the proposal by **Equally Ours**, for the provision of **RAPE AND SERIOUS SEXUAL OFFENCES RESEARCH** services, the Crown Prosecution Service are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the contract between the Crown Prosecution Service ("CPS") as the Customer and **Equally Ours, (EO)**, as the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the "**Conditions**"). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Agreement as they will not be accepted by the Customer and may delay the processes.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

- 1) The Services shall be performed primarily **remotely**.
- 2) The charges for the Services shall be as set out in Annex 2 (Charges).
- 3) The specification of the Services to be supplied is as set out in Annex 3 (Specification).
- 4) The Term shall commence **1<sup>st</sup> May 2022** and the Expiry Date shall be **28<sup>th</sup> February 2023**. A specific timetable for delivery of the Services shall be agreed between the Customer and the Supplier.
- 5) The address for notices of the Parties are:

#### Customer

The Crown Prosecution Service  
102, Petty France  
London  
SW1H 9EA  
Attention: Commercial Team  
Email: [dpu@cps.gsi.gov.uk](mailto:dpu@cps.gsi.gov.uk)

#### Supplier

**EQUALLY OURS  
THE FOUNDRY  
17 OVAL WAY  
LONDON  
SE11 5RR**

Attention: **Co-CEO**

Email: [Redacted under FOIA Section 40, Personal Information]

- 6) The following persons are Key Personnel for the purposes of the Agreement:

## Name

Redacted under FOIA Section 40, Personal Information.

Redacted under FOIA Section 40, Personal Information.

Redacted under FOIA Section 40, Personal Information.

## Title

Customer's Representative

Customer's Representative

Supplier's Representative

- 7) The Customer will require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who is identified as having a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## Payment

The Customer requires all ordering and payment procedures to be conducted via an e-procurement system; the Zanzibar purchase to pay system. The Customer will provide guidance for the registration and use of the Zanzibar system. The Customer will sponsor the Supplier to use this system and no costs will be incurred by the Supplier.

Following the award of the Contract an e-purchase order will be issued via the Zanzibar system to the Supplier; this order will be raised to the value of the Charges set out in Annex 2 to this Contract. This will be received by the Supplier as an attachment to an email and also directly into the Supplier portal. We will require successful Suppliers to submit requests for payment via the Zanzibar system as an e-invoice.

## Liaison

For general liaison your contact will continue to be [Redacted under FOIA Section 40, Personal Information] – **Senior Policy Advisor**

[Redacted under FOIA Section 40, Personal Information]@cps.gov.uk or, in their absence, [Redacted under FOIA Section 40, Personal Information] – **Head of Policy**,  
[Redacted under FOIA Section 40, Personal Information]@cps.gov.uk

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to [Redacted under FOIA Section 40, Personal Information] **Professional Services Category Manager** [Redacted under FOIA Section 40, Personal Information] at the above address **within 7** days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours sincerely,

Signed for and on behalf of Crown Prosecution Service

Name: [Redacted under FOIA Section 40, Personal Information.] [Redacted under FOIA Section 40, Personal Information.]

Position: Head of Category Strategic Sourcing Manager

Signature: [Redacted under FOIA Section 40, Personal Information.]

Date: 03/05/2022

We accept the terms set out in this letter and its **Annexes**, including the Conditions.

Signed for and on behalf of the Supplier

Name: [Redacted under FOIA Section 40, Personal Information.]

Position: Co-chief Executive

Signature: [Redacted under FOIA Section 40, Personal Information.]

Date: [Redacted under FOIA Section 40, Personal Information.]



## **Annex 1 - Terms and Conditions of Contract for Services**

### **Interpretation**

1.1 In these terms and conditions:

"Agreement"	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier's countersignature of the Award Letter;
"Approval" and "Approved"	refer to the written consent of the Customer's Representative;
"Award Letter"	means the letter from the Customer to the Supplier printed above these terms and conditions;
"Central Government Body"	means 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: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
"Charges"	means the charges for the Services as specified in the Award Letter;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Customer"	means the person named as Customer in the Award Letter;
"Customer Materials"	means anything provided to the Supplier under the operation of this Agreement
"Customer's Representative"	means the individual authorised to act on behalf of the Customer for the purposes of the Contract;
"DPA"	means the Data Protection Act 2018;
"Data Controller", "Data Processor" and "Data Subject"	shall have the same meanings given in the General Data Protection Regulations.
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection	

Legislation	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018, subject to Royal Assent, to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
Data Protection Officer	takes the meaning given in the GDPR
Data Subject Access Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Disrepute"	means the state of not being respected or trusted; the lack or decline of good reputation; the state of being held in low esteem by the public;
"Expiry Date"	means the date for expiry of the Agreement as set out in the Award Letter;
"FOIA"	means the Freedom of Information Act 2000;
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights"	means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registrable or not in any country including but not limited to the United Kingdom;
"Key Personnel"	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
LED	means Law Enforcement Directive (Directive (EU) 2016/680);
"Month"	means calendar month;
"Moral Rights"	Means the right to be identified as author of a work
"Party"	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	takes the meaning given in the GDPR
Personal Data Breach	takes the meaning given in the GDPR
"Project Specific Materials"	means anything brought or required to be brought into existence as part of, or for the purpose of, carrying out, or in connection with, the Project, including all reports, documents, computer models, data files

	and field data;
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Purchase Order Number"	means the Customer's unique number relating to the supply of the Services;
Relevant Conviction	For the purposes of this Call-Off Contract a Relevant Conviction is defined as a conviction relating to a current criminal offence (excluding minor motoring offences).
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Services"	means the services to be supplied by the Supplier to the Customer under the Agreement;
"Specification"	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
"Staff"	means all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any sub-Supplier of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time;
Sub-Processor	means any third Party appointed to process Personal Data on behalf of the Service Provider related to this Contract.
"Supplier"	means the person named as Supplier in the Award Letter;
"Supplier Materials"	means all materials, equipment, documents and other property of the Supplier
"Supplier's Representative"	means the individual authorised to act on behalf of the Supplier for the purposes of the Contract
"Term"	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 0 or terminated in accordance with the terms and conditions of the Agreement;
"The Project"	means the provision of RAPE AND SERIOUS SEXUAL OFFENCES Research services
"Variation"	means a properly executed variation to the Contract
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2. Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within 7 days of the date of the Award Letter.

## **3. Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Supplier shall take all reasonable steps to preserve the reputation and good name of the Customer and shall do nothing which would or might reasonably be expected to diminish the reputation of the Customer or would be likely to bring the Customer into disrepute.
- 3.4 The Customer may by written notice to the Supplier at any time request a Variation to the scope of the Services by submitting a draft in the form set out at Annex 4. The Variation when signed by both parties shall form part of the Contract. In the event that the Supplier agrees to any Variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

#### **4. Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to two (2) further periods of six (6) months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

#### **5. Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4 All amounts stated are exclusive of VAT which shall 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 Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

#### **6. Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the



Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered, and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
  - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-Suppliers as though those acts and omissions were its own.
- 8.2 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-Supplier within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 8.3 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 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.
- 9.2 The Supplier hereby:
  - 9.2.1 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
  - 9.2.1 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.
- 9.3 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 Specification.
- 9.4 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 and shall not be used for any purpose other than this Agreement.
- 9.5 Prior to delivery of the Services 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 Services. The Supplier will notify the Customer of any restrictions on usage and any other contractual restrictions arising in respect of such Third-Party Materials.

- 9.6 The Supplier agrees:
- 9.6.1 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
  - 9.6.2 neither to do nor fail to do any act which would or might prejudice the Customer's rights under this Clause 9.
- 9.7 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.
- 9.8 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.
- 9.9 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 9, 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.
- 9.10 The Supplier is not liable in connection with this Agreement for any modifications, adaptations or amendments to any Services 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 Services arises due to the acts or omissions of the Customer or its Affiliates.
- 9.11 The terms of and obligations imposed by this Clause 9 continue after the termination of this Contract.
- 9.12 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.

## **10 Governance and Records**

- 10.1 The Supplier shall:
- 10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - 10.1.2 submit progress reports to the Customer at the times and in the format

specified by the Customer.

- 10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

- 11.1 Subject to clause 11.2, each Party shall:
- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
  - 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
  - 11.2.2 to its auditors or for the purposes of regulatory requirements;
  - 11.2.3 on a confidential basis, to its professional advisers;
  - 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
  - 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
  - 11.2.6 where the receiving Party is the Customer:
    - (a) on a confidential basis to the employees, agents, consultants and Suppliers of the Customer;
    - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
    - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
    - (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is



exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12 Freedom of Information**

- 12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
  - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 12.1.3 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 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13 Protection of Personal Data**

- 13.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor. Annex 1 to Schedule 1 (Data Protection) sets out the scope, nature and purpose of processing by the

Supplier, the duration of the processing, the types of Personal Data and categories of Data Subject.

- 13.3 Without prejudice to the generality of Clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices (or other grounds as applicable) in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of Contract.
- 13.4 Without prejudice to the generality of Clause 13.1 the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Annex 1 to Schedule 1 (Data Protection), unless the Supplier is required by the Data Protection Legislation or the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("Applicable Laws"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental or unlawful loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and

regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data:
  - (i) do not process that data except on the written instructions of the Customer (such instructions to include the terms of this Agreement, and in particular Annex 1 to Schedule 1 (Data Protection));
  - (ii) take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that the Supplier Staff:
    - (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 the relevant sub-contractor;
    - (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 (as defined in the Data Protection Laws).
- (d) not transfer any Personal Data outside of the European Economic Area 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;
  - (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; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist and co-operate with the Customer in responding to any request to the Customer from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, in accordance with Article 28 (3) (e) and (f) of the General Data Protection Regulations (GDPR);
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach in accordance with Paragraph 2, Annex 3 to Schedule 1 (Data Protection);
- (g) assist the Customer, in accordance with Annex 3 to Schedule 1 (Data Protection), in meeting its obligations under the Data Protection Laws to notify any Data Subject of any Personal Data Breach or other breach of this Agreement, where the Customer determines, at its discretion, that the event or breach is likely to result in a high risk to the rights and freedoms of the Data Subject.
- (h) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law

to store the Personal Data. In carrying out its obligations under this clause, the Supplier shall be permitted to retain copies of the Personal Data:

- (i) where required by law to store the Personal Data;
- (ii) where such Personal Data is maintained on tapes, discs, servers or other storage devices provided that in each case it is put beyond use.

#### 13.5 Without prejudice to the generality of Clause 13.1

- (a) the Supplier shall maintain complete and accurate records and information to demonstrate its compliance with Article 28 GDPR and this Clause. Those records shall contain all of the information required in Article 30 (2) namely:
  - (i) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting and where applicable of the controllers or the processors representatives, and the Data Protection Officer
  - (ii) the categories of processing carried out on behalf of the controller
  - (iii) where applicable transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, the documentation of suitable safeguards
  - (iv) where possible a general description of the applicable technical and organisational security measures

Where the Supplier does not already employ or otherwise benefit from the services of a Data Protection Officer, and the Data Protection Legislation requires that it must do so prior to processing any Personal Data under this Agreement, the Supplier shall appoint and maintain in post a Data Protection Officer in accordance with the Data Protection Legislation and shall notify the Customer of that person's contact details.

- 13.6 The Supplier shall not appoint any third party to process Personal Data within the scope of this Agreement without the prior written consent of the Customer, such consent to be applied for and granted or refused in accordance with Clause 8 of this Agreement.
- 13.7 Prior to entering into this Agreement, the Supplier shall notify the Customer in writing of any third parties which already process Data on its behalf and may process Personal Data under this Agreement ("Third Party Processors"). The Supplier confirms that any Third Party Processors have entered into a written agreement with it (or shall do so prior to processing any Personal Data under this Agreement) incorporating terms which are substantially similar to those set out in this clause, with the effect that the obligations set out



in this Agreement and required by the Data Protection Legislation, shall apply to any such Third Party Processor.

- 13.8 The Supplier shall notify the Customer as soon as reasonably practicable of any intention to appoint or replace any Third Party Processor, and the Customer shall be entitled to object to such appointment or replacement, in accordance with Clause 13.6.
- 13.9 As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause.
- 13.10 Subject to the prior written agreement of the Customer, the Supplier 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 Schedule 1 (Data Protection))."
- 13.11 Nothing in this Agreement will permit the Supplier access to what the Customer considers to be confidential unless it is covered by the scheme and agreed by the Learner i.e. Learner's names and contact details

## **14 Liability**

14.1 Neither Party excludes or limits its liability for:

- a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- b) bribery or Fraud by it or its employees;
- c) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- d) any liability to the extent it cannot be excluded or limited by Law;
- e) wrongful termination of this Agreement; or
- f) any fine, penalty or related damages which have been caused by a breach of the Agreement by the Supplier and which breach causes the Customer to be in breach of applicable Law (excluding fines, penalties or related damages incurred by one Party for any breach of Data Protection Legislation, Clause 13 or Schedule 1 (Data Protection) to the extent such breach is caused by the other Party).

14.2 Subject always to clauses 14.1, 14.4, 14.5 and 14.7

- 14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
- 14.2.2 except in the case of claims arising under clauses 9.4 and 20.1, in no event shall the Supplier be liable to the Customer for any:
- (a) loss of profits;

- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.2.3 Neither Party shall be liable to the other Party for ex-gratia compensation payments in relation to liability for breach of the Data Protection Legislation, Clause 13 (Data Protection) and/or Schedule 1 (Data Protection), as applicable

14.3 Subject to Clause 14.2.1 and Notwithstanding Clauses 14.2.2 and 14.2.3, the Parties acknowledge that a Party may, amongst other things, recover from the other Party the following Losses incurred by: (i) the Customer to the extent that they arise as a result of a Default by the Supplier; and (ii) the Supplier to the extent that they arise as a result of a breach by the Customer of the Data Protection Legislation, Clause 13 and/or Schedule 1 (Data Protection), as applicable:

- (a) subject to Clause 14.2.1 any additional operational and/or administrative costs and expenses incurred by such Party, including costs relating to time spent by or on behalf of such Party in dealing with the consequences of the such Default or breach, as applicable;
- (b) subject to Clause 14.2.1 any wasted expenditure or charges rendered unnecessary and/or incurred by such Party arising from such Default or breach, as applicable;
- (c) subject to Clause 14.2.1 the additional cost of the Customer of procuring Replacement Services for the remainder of the Agreement Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement; and
- (d) subject to Clause 14.2.1, any financial amounts awarded by a court (and related interest) and compensation or interest paid to a third party by a Party.

14.4 in respect of all fines and, penalties which are incurred by one Party for any breach of the Data Protection Legislation to the extent that the breach of the Data Protection Legislation is caused by a breach by the other Party of the Agreement, then the total aggregate liability shall be:

- (a) for the Supplier (where the Supplier is the other Party), Seven million pounds (£7m GBP); and
- (b) for the Customer (where the Customer is the other Party), Three million pounds (£3m GBP)."

Subject to Clause 14.6 below, for the avoidance of doubt, the liability under this Clause 14.4 is a separate liability from and does not count towards liability under Clause 14.2.1 above and 14.5 below

14.5 subject to Clause 14.1 above, the total aggregate liability (including damages awarded to third parties and related interest) of one Party to the other Party for one or more of the other Party's breach of the Data Protection Legislation, Clause 13(Data Protection) and/or Schedule 1 (Data Protection), as applicable, is Three million pounds (£3m GBP). Subject to Clause 14.6 below, for the avoidance of doubt, the liability under this Clause 14.5 is a separate liability from and does not count towards liability under Clauses 14.4(a), 14.4(b) and 14.2.1 above and

14.6 a Party shall not be permitted to claim under the limit of liability in Clause 14.4 and/or Clause 14.5 and make an additional claim(s) under any other separate limit of liability in the

Agreement for any breach of the Agreement by the other Party arising out of the same or a similar event or series of events. For the avoidance of doubt, nothing in this Clause is intended to prevent a Party claiming under both Clauses 14.4 and 14.5

14.7 The Supplier's liability under the indemnity in clause 9.4 and 18.2 shall be unlimited.

## **15 Force Majeure**

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Supplier. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **16 Termination**

- 16.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 10 Working Days later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
  - 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
  - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17; or
  - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16) in consequence of debt in any jurisdiction.
- 16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination. this clause and clauses provision
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:
  - 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and

- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17 Compliance**

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Supplier shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
  - 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 17.5.1 the Official Secrets Acts 1911 to 1989; and
  - 17.5.2 section 182 of the Finance Act 1989.

## **18 Prevention of Fraud and Corruption**

- 18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **19 Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between



them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and Customer, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have 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.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement 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 the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall 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 breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any Customer to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## Annex 2 - Charges

**Redacted under FOIA Section 40, Personal Information.**

This Annex sets out the Charges, and the pricing, payment and invoicing provisions that apply

1. The Supplier shall issue invoices to the Customer in arrears on the written Customer agreement and acceptance of each project phase or milestone completion and all correctly submitted invoices shall be paid by the Customer within 30 calendar days.
2. All monetary figures in this Annex are exclusive of VAT
3. **Redacted under FOIA Section 40, Personal Information.**
4. Expenses
  - 4.1 the Supplier shall not be entitled to be reimbursed by the Customer for travel and subsistence (e.g. hotel and food) expenses incurred in the performance of the Services, except where agreed by the Customer.
5. Project Review
  - 5.1 the Customer shall review each completed milestone and confirm whether to proceed to the next project stage in accordance with Cl. 16.1 Termination.

## **Annex 3 - Specification**

**CPS;**

### **RAPE AND SERIOUS SEXUAL OFFENCES RESEARCH - SPECIFICATION**

#### **1. Introduction**

The Crown Prosecution Service (CPS) prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. The CPS is independent, and we make our decisions independently of the police and government.

Our duty is to make sure that the right person is prosecuted for the right offence, and to bring offenders to justice wherever possible.

The CPS:

- decides which cases should be prosecuted;
- determines the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations;
- prepares cases and presents them at court; and
- provides information, assistance and support to victims and prosecution witnesses.

Prosecutors must be fair, objective and independent. When deciding whether to prosecute a criminal case, our lawyers must follow the Code for Crown Prosecutors.

This means that to charge someone with a criminal offence, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction, and that prosecuting is in the public interest.

#### **2. Background**

The CPS published its five year strategy - [RASSO 2025](#) – strategy and has developed a [Joint National Action Plan](#) with the police which have both been informed by stakeholder consultation.

RASSO 2025 outlines a number of long-term outcomes which the CPS is working towards including:

- Ensuring the delivery of fairness and justice to all involved in RASSO cases including complainants and suspects / defendants
- Improving public understanding of the role of the CPS in RASSO cases
- Improving public trust in our approach on RASSO cases
- Ensuring timely and sensitive communications with RASSO victims and witnesses which sensitive to the needs of vulnerable individuals
- Working effectively with partners to inform and support victims
- Ensuring our strategy, policy and guidance is informed by stakeholder expertise and insight
- Ensuring that prosecutors and advocates understand the complexities connected with rape and victim behaviours – such as the impact of trauma and the changing nature of sexual behaviours and encounters

An end-to-end rape review report was published in June 2021 with a number of recommendations to improve the criminal justice system response. As part of this, a joint inspection report was published on 16 July on the police and CPS handling of RASSO cases. The Government made a manifesto



commitment to establishing a Royal Commission on the criminal justice system. The CPS will continue to engage and implement recommendations from these reviews as appropriate.

Rape is a complex, emotive and often contentious subject. It is likely that our choice of words and how we present issues will have a real impact on the delivery of the CPS's work and its ability to achieve its outcomes.

Building on our work on RASSO, and to ensure effective and successful implementation, we need to understand – in detail - public understanding of RASSO and the law on consent, reflecting the changing nature of sexual behaviours and encounters.

This should be rooted in up-to-date insight into public views and understanding.

As well as an insight into what the public understanding is, the research should highlight why this might be the case with reference to shared values and prejudices. Throughout the work, there should be an emphasis on equality considerations and intersectionality across protected characteristics.

### **3. Scope of the Contract**

To deliver high-quality and evidence based research findings around, and the impact of language on:

- the public understanding of RASSO overall including awareness, acceptability and common misperceptions
- the public understanding of the existing law on consent including the statutory definition of consent (around someone's freedom and capacity to choose) and reasonable belief in consent
- the public understanding on the law on consent reflecting the changing nature of sexual behaviours and encounters

The public is not a single entity and a deeper understanding of how different groups understand complex issues. Detailed consideration is therefore required around different groups of people and where groups intersect with each other (note the following list is not exhaustive; the research process may identify other groupings such as class) including by:

- Age – people belonging to a specific age or age ranges – as a minimum to include under 18s, 18-24 and 65+ with recommendations for other age ranges
- Disability – including physical and mental impairment
- Gender reassignment
- Marriage / Civil partnerships and other relationship statuses
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

As well as an insight into what the public understanding is, the research should highlight why this might be the case with reference to shared values and prejudices.

An equality impact assessment should be conducted to guide the development and delivery of this work.

### **4. Detailed Requirements**

The supplier shall have a proven track record on issues related to equality and human rights including gender-based violence. Understanding and expertise of issues related to RASSO will be required.

The supplier will provide a detailed research report to fulfil the scope of the contract.

We request that providers set out detailed research methodologies that will achieve our goals. At a minimum, unless advised otherwise, we would expect the following services to be delivered:

- Equality impact assessment: to identify and respond to issues relevant to different groups of people including consideration of intersectionality
- Literature review: to undertake a review of relevant research in place in relation to public understanding as per the scope for the contract.
- Audience Insight Research: Three to five roundtable meetings (potentially virtually given measures to manage Covid-19 in a secure and effective way) with experts from a range of fields on RASSO. Including, but not limited to: leading rape advocates, CPS Heads of RASSO Units, academics, victims' groups and other Government departments and agencies. This should focus on public understanding as per the scope of the contract.
- Media Discourse Analysis: including consideration of agents of change, mapping the gap between the 'expert view' and the 'dominant view' in society and influential factors around public understanding (as per the scope of the contract) in terms of values, language and feeling.
- Testing: Rigorous quantitative analysis and qualitative analysis of the findings from the literature review, audience insight research and media discourse analysis to include randomised controlled trials with a representative sample of members of the public (bearing in mind intersectionality) including the creation of a baseline; recruitment; development, implementation and analysis of survey findings.

Consideration should also be given to contingency / business continuity planning.

## **5. Reporting Requirements**

A detailed timetable and project plan will need to be agreed between all parties and regularly reviewed both informally, in regular catch up meetings, and formally through updates to senior working and steering groups, as required.

Key milestones will be agreed for each stage of the work reflecting the delivery of key requirements.

The previous section outlines possible milestones reflecting the detailed requirements which will need to be discussed and formally agreed by all parties in writing. At a minimum, milestones should be provided for the:

- Equality impact assessment
- Literature review
- Audience insight research
- Media discourse analysis
- Quantitative and qualitative testing
- Delivery of research report

## **6. Payment**

Milestone payments will be made upon completion of each of the five phases of the project to the satisfaction of the CPS Senior Policy Advisor, which will not be unreasonably withheld.

A break clause will also be included within the terms of contract at the end phase of the project and milestone payment.

Prior to completion, the report will need to be approved by the CPS and the supplier will be responsible for reporting the draft findings, responding to questions and reflecting feedback provided within the final version which will need to be agreed by senior officials within the CPS.

## **7. Service Levels and Key Performance Indicators (KPIs)**

KPIs should be clearly linked to the specification and payment regime to allow performance failure to be tracked and reflected in payment abatement.

## **8. Contract Management and Review**

A clear project plan, governance arrangement and reporting structure will need to be agreed to ensure transparency, accountability and engagement on the development of this piece of work. At a minimum, the following requirements will be expected to be fulfilled:

- A project initiation phase to agree a detailed methodology and project plan
- A monthly updated report
- Written and verbal updates to senior officials and steering group meetings as and when required
- Regular review meetings and calls with rape team as and when required
- A project plan setting out detailed milestones for the delivery of requirements

## **9. Sustainability**

The Supplier shall manage the services in such a way as to minimise any impact on the environment and support the Customer's sustainable procurement policy.

The Customer policy on sustainable procurement is:

- to comply with environmental legislation and regulatory requirements;
- to promote environmental awareness amongst suppliers;
- to buy less environmentally damaging products and services;
- to consider environmental factors when making procurement decisions; and
- to develop awareness of environmental issues within the Customer organisation.

The Supplier must support this policy and apply similar policies within its own business. The Supplier shall as a matter of policy both recycle and use recycled products where possible and feasible to do so, and encourage environmentally sensitive attitudes in its personnel. The Supplier will report to the Customer on an annual basis the amount of electrical equipment which is recycled within the Supplier's organisation.

The Supplier shall operate to the ISO 14001 standard or a nationally recognised equivalent standard relevant to the scope of the services.

The Supplier shall provide assistance to the Customer to support the Government's agenda to meet the Greening Government Commitments (GGC) including associated reporting requirements, details of which can be accessed at the following link:

<https://www.gov.uk/government/publications/greening-government-commitments>

## **10. Supplier General Clarification**

The Supplier shall use its expertise in research, policy and communication to effectively fulfil the requirements outlined in the specification.

Please provide a revised proposal which shall address all of the points raised in this specification.

In addition, please also;

- Complete the CPS Electronic Tender Tool, Bravo, Supplier Evaluation questionnaire.
- Provide a statement to indicate how you maintain your independence and objectivity from 'political' or other influence how the outputs are evidence based, objective and independent. This could include how you engage and manage your 3<sup>rd</sup> party supply chain or research providers and potential conflicts of interest.

## **11. Contract Period**

Subject to the agreed methodology, it is envisaged that this contract will last for ten months; payment will be made following agreed milestones and a break clause introduced.

**Equally Ours Research Proposal;**

**Understanding public attitudes to rape and serious sexual offences – November 2021**

Redacted under FOIA Section 40, Personal Information.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]





Redacted under FOIA Section 40, Personal Information.

## Model

This proposal is underpinned by the following model.

Redacted under FOIA Section 40, Personal Information.

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Redacted under FOIA Section 40, Personal Information.

Redacted under FOIA Section 40, Personal Information.

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

## Costs

The total cost for the work is £81,500 excl of VAT. Redacted under FOIA Section 40, Personal Information.

[Redacted]

Redacted under FOIA Section 40, Personal Information.

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Redacted under FOIA Section 40, Personal Information.



<p>Redacted under FOIA Section 40, Personal Information.</p>	<p>[Redacted]</p>			
<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>
<p>[Redacted]</p>				
<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>
<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>

<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>	<div>[REDACTED]</div>
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**Redacted under FOIA Section 40, Personal Information.**



## Project management

Redacted under FOIA Section 40, Personal Information.

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]

Redacted under FOIA Section 40, Personal Information.





#### Annex 4: - Variation Form

[PR Number] – [Name of Contract for Services]

Variation No.: X

BETWEEN:

**The Crown Prosecution Service ("the Customer")**  
and  
**[Name of Supplier company here] ("the Supplier")**

1. This Agreement is varied as follows:

Summary of Change	[Describe summary of change here briefly e.g. Time Extension & Increase in Contract Value]	
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Variations to date	£
	[Variation X value]	£
	New Contract Value (Total)	£
Revised Payment Schedule		
Revised Specification (see Annex A if applicable)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

- Words and expressions in this Variation shall have the meanings given to them in this Agreement.
- This Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.
- This variation shall take effect on [DATE]

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

Signature:	
Name (in Capitals):	
Date:	
Position:	

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

Signature:	
Name (in Capitals):	
Date:	
Position:	

## Annex 5 - Data Protection

### **Part 1 - 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 Annex.

**Redacted Under FOIA Section 43, Commercial Interests**



Redacted Under FOIA Section 43, Commercial Interests



**Part 2 - Assistance with Data Protection Impact Assessment**

Redacted Under FOIA Section 43, Commercial Interests



Redacted Under FOIA Section 43, Commercial Interests



Redacted Under FOIA Section 43, Commercial Interests

