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| --- | --- | --- |
|  |  |  |
|  | Commercial DirectorateMartello HouseShearway Business ParkShearway Road FolkestoneKent CT19 4RH | T 01303 299304**www.gov.uk/home-office** |
| [Recipient’s name][Position, company][First address line][Second address line] [Town/city Postcode] |  |  |

Attn:

By email to:

Date:

Your ref:

Our ref:

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*DRAFT\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

*Dear Sirs,*

***Award of contract for the supply of Forensic Medical Examiner Services***

*Following your tender/ proposal for the supply of Forensic Medical Examiner Services to Home Office Border Force, we are pleased to award this contract to you.*

*This letter (Award Letter) and its [Annex/Annexes] set out the terms of the contract between Home Office Border Force as the Customer and [****insert Supplier’s name****] 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 Award Letter as they will not be accepted by the Customer and may delay the conclusion of the Agreement.*

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

1. *The Services shall be performed at [ ].*
2. *The charges for the Services shall be as set out in Annex 2.*
3. *The specification of the Services to be supplied is as set out in Annex 3.*
4. *The Term shall commence on 1st April 2015 and the Expiry Date shall be 31st March 2016, unless extended or subject to early termination.*
5. *The address for notices of the Parties are:*

|  |  |
| --- | --- |
| ***Customer*** | ***Supplier*** |
| *[****insert nameand address of Customer****]**Attention: [****insert title****]**Email: [****insert email address****]* | *[****insert nameand address of Supplier****]**Attention: [****insert title****]**Email: [****insert email address****]* |

1. *The following persons are Key Personnel for the purposes of the Agreement:*

|  |  |
| --- | --- |
| ***Name*** | ***Title*** |
|  |  |

1. *For the purposes of the Agreement the Staff Vetting Procedures and data security requirements are set out in Annex 3.*
2. *The Customer may 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 discloses that he/she has 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.*
3. *The Customer gives no undertaking or guarantee as to the amount of work that may from time to time be available under this contract.*

***Payment***

*All invoices must be sent, quoting a valid purchase order number (PO Number), to: Home Office Shared Service Centre, HO Box 5015, Newport, NP20 9BB. Within 14 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.*

*To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to finance-ap-enquiries@homeoffice.gsi.gov.uk or by telephone 0845 010 0122 between 09:00-17:00 Monday to Friday.*

***Liaison***

*For general liaison your contact will continue to be[* ***name and contact details****] or, in their absence, [****name and contact details****].*

*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 [****insert name****] 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 faithfully,*

|  |
| --- |
| *Signed for and on behalf of [****insert name of Customer****]* |
| *Name: [****insert name****] [****insert job title****]* | *Name:Buyer name (Procurement)* |
| *Signature:* | *Signature:*  |
| *Date:* | *Date:*  |

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

|  |
| --- |
| *Signed for and on behalf of [****insert name of Supplier****]* |
| *Name: [****insert name****] [****insert job title****]* |  |
| *Signature:*  |  *Date:*  |
|  |  |

**Annex 1**

**Terms and Conditions of Contract for Services**

* + - * 1. Interpretation

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; |
| “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:1. Government Department;
2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
3. Non-Ministerial Department; or
4. 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; |
| “DPA” | means the Data Protection Act 1998;  |
| “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; |
| “Information” | has the meaning given under section 84 of the FOIA;  |
| “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;  |
| “Party” | means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;  |
| “Personal Data” | means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement; |
| “Purchase Order Number” | means the Customer’s unique number relating to the supply of the Services;  |
| “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 contractors of the Supplier and/or of any sub-contractor 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;  |
| “Supplier” | means the person named as Supplier in the Award Letter; |
| “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 4.2 or terminated in accordance with the terms and conditions of the Agreement;  |
| “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. |

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

references to numbered clauses are references to the relevant clause in these terms and conditions;

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;

the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;

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

the word ‘including’ shall be understood as meaning ‘including without limitation’.

* + - * 1. Basis of Agreement

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.

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.

* + - * 1. Supply of Services

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.

In supplying the Services, the Supplier shall:

co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s instructions;

perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;

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;

ensure that the Services shall conform with all descriptions and specifications set out in the Specification;

comply with all applicable laws; and

provide all equipment, tools and vehicles and other items as are required to provide the Services.

The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. 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.

* + - * 1. Term

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.

The Customer may extend the Agreement for a period of up to 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.

* + - * 1. Charges, Payment and Recovery of Sums Due

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.

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.

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.

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.

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.

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.

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.

* + - * 1. Premises and equipment

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.

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.

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.

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.

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.

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.

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.

* + - * 1. Staff and Key Personnel

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:

refuse admission to the relevant person(s) to the Customer’s premises;

direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or

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.

The Supplier shall:

ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;

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

procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

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.

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.

* + - * 1. Assignment and sub-contracting

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-contractors as though those acts and omissions were its own.

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-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

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.

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.

* + - * 1. Intellectual Property Rights

All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

The Supplier hereby grants the Customer:

a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

* + - * 1. Governance and Records

The Supplier shall:

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

submit progress reports to the Customer at the times and in the format specified by the Customer.

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.

* + - * 1. Confidentiality, Transparency and Publicity

Subject to clause 11.2, each Party shall:

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

not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.

Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

where disclosure is required by applicable law or by a court of competent jurisdiction;

to its auditors or for the purposes of regulatory requirements;

on a confidential basis, to its professional advisers;

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;

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

where the receiving Party is the Customer:

on a confidential basis to the employees, agents, consultants and contractors of the Customer;

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;

to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

in accordance with clause .

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.

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.

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.

* + - * 1. Freedom of Information

The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

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;

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;

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

not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

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.

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.

* + - * 1. Protection of Personal Data and Security of Data

The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:

ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;

promptly notify the Customer of:

any breach of the security requirements of the Customer as referred to in clause ; and

any request for personal data; and

ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer’s obligations under the DPA.

When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

* + - * 1. Liability

The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

Subject always to clauses 14.3 and 14.4:

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 tortuous 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

except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:

loss of profits;

loss of business;

loss of revenue;

loss of or damage to goodwill;

loss of savings (whether anticipated or otherwise); and/or

any indirect, special or consequential loss or damage.

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

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

fraud or fraudulent misrepresentation by it or that of its Staff; or

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

The Supplier’s liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

* + - * 1. 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 Party affected. 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.

* + - * 1. Termination

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 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

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:

(without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

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;

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;

undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17; or

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 ) in consequence of debt in any jurisdiction.

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.

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.

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.

Upon termination or expiry of the Agreement, the Supplier shall:

give all reasonable assistance to the Customer and any incoming supplier of the Services; and

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

* + - * 1. Compliance

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.

The Supplier shall:

comply with all the Customer’s health and safety measures while on the Customer’s premises; and

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.

The Supplier shall:

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

take all reasonable steps to secure the observance of clause  by all Staff.

The Supplier shall supply the Services in accordance with the Customer’s environmental policy as provided to the Supplier from time to time.

The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

the Official Secrets Acts 1911 to 1989; and

section 182 of the Finance Act 1989.

* + - * 1. Prevention of Fraud and Corruption

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.

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.

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:

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

recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

* + - * 1. Dispute Resolution

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.

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.

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.

* + - * 1. General

Each of the Parties represents and warrants to the other that it has full capacity and authority, 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.

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.

The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

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.

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.

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 authority to make any commitments on the other Party’s behalf.

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.

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.

* + - * 1. Notices

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 , 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:

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.

Notices under clauses  (Force Majeure) and (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 .

* + - * 1. 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**

A single case fee, inclusive of all overheads, travel costs and staffing costs will be payable for each person seen at the request of the Authority. This case fee applies whether the patient is seen on or offsite, and regardless of length of examination, or whether single or multiple patients are seen.

The fee for the Contract period is;

£[ ] per case seen by a Forensic Medical Examiner

£[ ] per case seen by a Forensic Nurse Practioner

£[ ] per Telephone advice

**Annex 2**

**Specification for the Provision of Forensic Medical Services**

**DEFINITIONS**

**“Healthcare Professional”** meansa Forensic Medical Examiner (FME) or a Forensic Nurse Practitioner (FNP).

**“Port(s)”** means **[ ]**

1. **Key Service Requirement**
	1. The Supplier will provide the Services to the Customer at the Port(s) on 24 hours a day basis, 365 days a year (366 in a leap year) which meet or exceed the Customer requirements for the Services as set out in this Contract. The key service requirements are to provide:

		1. High quality forensic medical services to detainees and the Customer’s officers or employees injured in the course of their duty;
		2. Medical advice that is independent of the investigative process and that is in accordance with relevant legislation, guidance and identified best practice; and
		3. Healthcare Professionals who meet the relevant professional and ethical standards and have the relevant training and qualifications to enable them to perform the Services lawfully and effectively.
2. **Provision Of The Services**
	1. **General Requirements**
		1. In delivering the Services, the Supplier and the Healthcare Professionals shall comply with the following legislation and guidance:

			1. Police and Criminal Evidence Act 1984 (PACE ) or Criminal Law (Consolidation)(Scotland) Act 1995, Section 26 ( 11) and Criminal Law (Consolidation) (Scotland) ACT 1994, Section 24 where appropriate;
			2. Patient Group Directions (PGD);
			3. The appropriate professional code of conduct;
			4. The misuse of Drugs regulations 2001;
			5. NCPE/ACPO 2005 Guidance on Investigating Child Abuse and Safeguarding Children;
			6. The Faculty of Forensic and Legal Medicine (FFLM) guidance.
		2. The Supplier will establish liaison links with the Customer so that issues that arise from the delivery of the service can be addressed quickly and efficiently.
		3. The Supplier will establish systems and procedures for:

			1. The provision of the Services to detainees at the Port(s);
			2. The provision of competent Healthcare Professionals who meet the relevant professional and ethical standards and who hold relevant qualifications have received appropriate training;
			3. The provision of training to Healthcare Professionals to enable them to carry out their duties effectively;
			4. The provision of Healthcare Professionals of a specified gender on a reasonable endeavour basis when required to meet detainee’s cultural needs;
			5. Ensuring that the Customer’s staff can initiate a request for custody medical services by making one telephone call to a single point of contact;
			6. Ensuring that an appropriate Healthcare Professional attends the Ports within reasonable time but no later than 90 minutes from the time of the request and that Customer staff requesting the service are kept informed about estimated times of arrival;
			7. Ensuring that Healthcare Professionals write full contemporaneous medical notes which are stored securely in accordance with the Data Protection Act ;
			8. Ensuring that Healthcare Professionals attend civil and criminal courts or tribunals to give evidence when required;
	2. **Compliance Requirements For Healthcare Professionals**

		1. The Supplier will ensure that Healthcare Professionals required to perform any Services under this contract shall have received the correct training and have attained the appropriate qualification to perform the Services lawfully and to the relevant professional and ethical standards.
		2. All Healthcare Professionals delivering the Services will be vetted by the appropriate Police Customer.
		3. All Healthcare Professionals delivering the Services will be Criminal Records Bureau (CRB) cleared to enhanced level.
		4. All Healthcare Professionals delivering the Services will have demonstrated that they have at least 3 year residency in the UK and have provided evidence of the right to live and work in the UK.
		5. All Healthcare Professionals delivering the Services will be fluent in the English language.
		6. All Healthcare Professionals delivering the Services will be registered medical practitioners, registered nurses, or paramedics fully qualified to carry out the Services. Healthcare Professionals will provide the Services as professionals, exercising independent clinical judgement and will be bound by the ethics and codes of practice of their relevant professional body (i.e. General Medical Council (GMC), Nursing and Midwifery Council (NMC) and/or Health Professionals Council (HPC)).
		7. The Supplier will ensure that all Healthcare Professionals are registered with their professional body (ie GMC, NMC, HPC) whilst providing the Services and are deemed fit and competent to practice by their relevant professional body.
		8. The Supplier will ensure that all Healthcare Professionals are a member of a recognised medical defence organisation and all Healthcare Professionals are covered by valid policies of Professional Indemnity and Medical Malpractice.
		9. The Supplier will be responsible for ensuring that all Healthcare Professionals delivering the Services are appropriately vaccinated.
	3. **Working With The Customer**

		1. The Healthcare Professional delivering the Services will comply, as far as practicable, with any instructions given by, and not unnecessarily to obstruct the Customer’s officers engaged in the investigation of crime, the protection of life or property and/or obtaining and preserving evidence, and in particular not to act in such a way as might result in the loss or destruction of evidence or prejudice the evidential value of any such evidence or prevent or interfere with the obtaining of evidence by questioning of any person who is medically fit for questioning.
		2. The Healthcare Professional will complete any official documentation required in the performance of the Services and will provide a witness statement as reasonably required to do so by the Customer who will request the statement through and in accordance with the Supplier’s statement request procedure.
		3. The Customer’s supervisor in charge of the custody suite at the Port will provide the Healthcare Professional on their arrival in custody with a briefing on the reason for the call out, any relevant background to the case, and any concerns that they may have concerning the detainee to enable the Healthcare Professional to carry out an appropriate examination.
		4. Following an examination, the Healthcare Professional will brief the Customer’s supervising officer of the results of the examination and advise on the risks or issues that need to be considered in the care plan for the detainee.
	4. **Duties To Be Performed By The Supplier**

		1. The Supplier will provide a single freephone number 7 days a week, 24 hours a day for 365 days a year (366 days in a leap year) for the Customer’s custody staff to call to request either telephone advice or the attendance of a Healthcare Professional.
		2. The Supplier will send a suitably qualified Healthcare Professional to the Port as soon as reasonably practicable but within 90 minutes of being requested to attend.
		3. The Supplier will inform the Customer’s custody staff of their estimated time of arrival and of any delays in attendance.
		4. The Customer’s custody staff will provide the Supplier with the information requested in order for the call to be triaged and appropriate advice given to the Customer’s custody staff.
		5. The Supplier undertakes to provide the following medical services:

			1. Provision of telephone advice to the Customer’s supervising officer in relation to an individual in custody or an officer of the Customer injured in the course of his/her duty;
			2. Examine, and if necessary render assistance to any person in the Customer’s custody area;
			3. Examine, and if necessary render medical assistance to suspects and offenders in cases being investigated by the Customer;
			4. Examine, and if necessary render medical assistance to any officer of the Customer injured in the course of his/her duty;
			5. Examine any person whose detention is being contemplated by the Customer in order to ascertain and certify their fitness for detention and to examine any person who is detained by the Customer in order to ascertain and certify their fitness for continued detention;
			6. Examine any person in detention whom the Customer wish to interview in order to ascertain and certify their fitness to be interviewed;
			7. In any case where the Healthcare Professional considers that a detainee is unfit to be detained or interviewed, or an officer of the Customer to continue on duty, to take appropriate actions considered necessary for the health and well-being of the detainee or officer;
			8. Healthcare Professionals will not conduct any internal examination without appropriate consent and authorisation and will not conduct any such examination in a custody suite;
			9. Advise and assist any of the Customer’s officers or employees who require medical advice or assistance in the execution of his/her duties;
		6. Attend a court of law or tribunal when required to do so in order to give evidence in connection with any matter with which the Healthcare Professional has been involved in the course of their duty/duties; and, for these purposes, of any disciplinary tribunal under the Customer’s Discipline Procedures is to be regarded as a tribunal under this paragraph.
		7. The Healthcare Professional will provide a witness statement if and when required to do so by the Customer who will request the statement through the Supplier’s statement request procedure.
		8. From time to time, if required in circumstances where the person cannot be examined in the medical room within the custody suite, the Healthcare Professional will, if required by the Customer, provide medical services in any adjacent designated Customer custody suite or within the Customer’s controlled areas within passenger terminals at the Port.
3. **Giving Evidence For The Defence**

	1. A Healthcare Professional which has provided services under this Agreement should not normally appear as an expert medical witness for the Defence in any related criminal proceedings except in the following circumstances:
		1. Where the defendant is already a patient of the Healthcare Professional, or a patient of any partner in his/her practice;
		2. If the Healthcare Professional has been called to examine a defendant by the Customer and the Crown Prosecution Service then decide not to call the Healthcare Professional as an expert medical witness.
	2. If, in any of the circumstances set out in 4.1 above, a Healthcare Professional gives evidence for the Defence, or acts as Medical Advisor to the Defence in any criminal proceedings, he/she shall:
		1. Notify the officer in charge of the investigation;
		2. Notify, in confidence, any professional colleagues known to him/her to be appearing for the Prosecution.
4. **Confidentiality and Records**
	1. The Supplier undertakes to keep secret and not to disclose and to procure that its Healthcare Professionals, employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature obtained by him/her by reasons of this Agreement except information which is in the public domain. The term confidential information shall include but not be limited to any information relating to a particular investigation, procedures, or the operation of the Customer.
	2. All Healthcare Professionals shall be trained during their Induction and training on their data protection responsibilities and common law duty of confidentiality and the Caldecott Principles, especially the security of records whether paper based, on any electronic system and on the rare event that records need to be taken outside of the custody area. All Healthcare Professionals shall also be trained to comply with any locally agreed policies or procedures in respect of document handling and security. In particular, HPs will be informed that:
		1. Medical Records when in hard copy form, shall be stored in a locked filing cabinet with the key securely stored and available only to authorised personnel;
		2. Medical records either electronic or hard copy shall never be left unattended when taken outside of the custody area and will be returned to secure storage at the earliest opportunity.

1. **Examination Facilities**

5.1 The Customer will provide adequately furnished, heated, ventilated and illuminated examination facilities at each place where the Healthcare Professional is normally required to perform examinations and will provide, where reasonably practicable, all such equipment and medication prescribed by the Healthcare Professional.