

Structure review services

Terms and Conditions

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This **AGREEMENT** is made on the day of 2021

**BETWEEN**:

1. **SINGLE SOURCE REGULATIONS OFFICE** of 3rd Floor Finlaison House, 15-17 Furnival Street, London EC4A 1AB (the “**SSRO**”) of the one part; and
2. **[Contractor registered name]** (registered company number [ ]) of [Contractor registered address](the “Contractor”) of the other part individually a “**Party**” and together the “**Parties**”.

**WHEREAS:**

1. The SSRO has conducted a tender process to appoint a contractor to deliver structure review services, which are more particularly defined in clause 1 and the Specification.
2. The Contractor has been appointed pursuant to that tender process and the Parties have entered into this Contract on the terms set out herein.

**NOW IT IS HEREBY AGREED as follows:**

## Definitions

* + 1. In the Contract the following capitalised words shall have the relevant meanings ascribed to them as detailed below (unless the context suggests otherwise):
			- 1. “**Charges Cap**” means the sum of £[ ] (excluding VAT) being the maximum sum payable to the Contractor under this Contract for delivering the Services;
				2. “**Charges**” means the sum payable to the Contractor for delivering the Services, as set out in the Pricing Schedule;
				3. “**Clarifications**” means the SSRO’s response to any questions raised by the Contractor during the tender process and which form part of the Specification;
				4. **“Client Officer”** means one or more officers of the SSRO representing the SSRO and as notified to the Contractor from time to time;
				5. **“Commencement Date”** means the date of this Contract;
				6. **“Complaint”** means a complaint made by a Data Subject;
				7. “**Compliance Forms**” means the Form of Tender and Statement of Conduct completed by the Contractor during the tender process and contained in the Contractor’s Proposal;
				8. “**Conflict of Interest”** means an actual or potential conflict between the interests of the SSRO and the interests of the Contractor or any other third party;
				9. **“Contract”** means this agreement, together with its schedules, under which the Contractor will deliver the Services to the SSRO;
				10. **“Contract Period”** means the period from the Commencement Date until the End Date;
				11. **“Contractor’s Confidential Information”** means the Information belonging to the Contractor in respect of which one of the following is satisfied:
* It comprises Protected Data; or
* Disclosure of the Information would, or would be likely to, prejudice the commercial interests of any person (including one of the Parties) and the public interest in maintaining non-disclosure would outweigh the public interest in disclosure; or
* Disclosure of the Information would constitute a breach of confidence actionable by either Party or a third party;
	+ - * 1. **“Contractor’s Manager”** means the Employee of the Contractor with principal responsibility for providing the Services;
				2. **“Contractor’s Proposal”** means the proposals submitted by the Contractor, and accepted by the SSRO, which describe how the Contractor will carry out the Services, as attached at Schedule 3;
				3. **“Data Controller”** has the meaning given to it by the Data Protection Act 2018;
				4. **“Data Processor”** has the meaning given to it by the Data Protection Act 2018;
				5. **“Data Subject”** means an individual whose personal data is Protected Data;
				6. **“Data Subject Request”** means a request by a Data Subject pursuant to Data Protection Laws;
				7. **“Data Protection Laws”** meansthe UK GDPR and Data Protection Act 2018, as amended, replaced, re-enacted or superseded from time to time;
				8. **“Deliverable”** means any product, tangible or intangible, resulting from the performance of the Services;
				9. “**Employee**” shall include any person who is an employee or director of the Contractor or a partner in the Contractor, or who occupies the position of a director of the Contractor, by whatever title given;
				10. **“End Date”** means 14 July 2021;
				11. **“Information”** means information or data recorded in any form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;
				12. **“Intellectual Property Rights”** means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright, moral right, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;
				13. **“International Organisation”** means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries;
				14. **“ITT”** and “**Invitation to Tender”** means the document at Schedule 4 to the Contract by which organisations, including the Contractor, were invited to submit a tender to deliver the Services;
				15. **“Key Personnel”** means the Contractor’s personnel authorised to deliver the Services, each of whom are specified in the Contractor’s Proposal;
				16. **“Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure, or access to, Protected Data transmitted, stored, or otherwise processed;
				17. **“Pricing Schedule”** means the document with the same title and contained in the Contractor’s Proposal;
				18. **“Protected Data”** means any personal data within the meaning of the Data Protection Act 2018 processed by a Data Processor on behalf of a Data Controller in performing the Services;
				19. **“Processing Instructions”** means a Data Controller’s instructions for the processing of Protected Data by a Data Processor;
				20. **“Services”** means the Services described in the Specification, which the Contractor is required to provide under this Contract;
				21. **“Specification”** means the document appended at Schedule 2 provided by the SSRO to the Contractor, together with the Clarifications, which together set out the SSRO’s requirements for the Services;
				22. **“Stage”** means a defined section of the Services as set out, if relevant, in the Specification;
				23. **“Supervisory Authority”** means an independent public authority responsible for monitoring the application of the Data Protection Laws in the United Kingdom;
				24. “**UK GDPR**” has the meaning given to it in section 3(10), as supplemented by section 205(4), of the Data Protection Act 2018;
				25. **“Working Day”** means any day other than a Saturday, Sunday or public holiday in England and Wales.
		1. In these terms and conditions:
			- 1. a reference to a person includes a natural person and any body or organisation with a separate legal personality;
				2. a reference to a party includes its personal representatives, successors or permitted assigns;
				3. a reference to a regulation, regulatory provision, statute or statutory provision is a reference to such statute or provision as amended, replaced or re-enacted and includes a subordinate instrument or provision of such instrument as amended, replaced or re-enacted.
				4. a reference to a policy or guidance document is a reference to a policy or guidance document as amended or replaced.

## Duration

* + 1. The duration of the Contract shall be the Contract Period unless terminated earlier in accordance with the provisions of the Contract or by operation of statute or common law.

## SSRO’s obligations

* + 1. In consideration of the delivery of the Services by the Contractor, the SSRO shall pay the Contractor the Charges in accordance with clause 6, subject to (a) the Contractor complying with its obligations under the Contract; and (b) the Charges Cap.
		2. The SSRO shall provide the Contractor with such information and instructions as the Contractor reasonably requires for the purposes of providing the Services.

## Contractor’s General Obligations

* + 1. The Contractor shall deliver the Services prior to the End Date and meet any performance dates and other requirements for the Services in the Specification or as otherwise notified by the SSRO to the Contractor.
		2. In providing the Services, the Contractor shall:
			- 1. co-operate with the SSRO in all matters relating to the Services and comply with the SSRO’s instructions;
				2. perform the Services in a timely manner, using reasonable care, skill and diligence and in accordance with best practice in the Contractor’s industry, profession or trade;
				3. ensure that only the Key Personnel are allocated to deliver the Services and that no other person is so allocated without the prior consent of the SSRO;
				4. ensure that the Services conform with the Specification and the SSRO’s instructions and that the Deliverables are fit for any purpose expressly or impliedly made known to the Contractor by the SSRO;
				5. ensure that the Deliverables and Information shared with the Contractor by the SSRO is shared only with those SSRO employees specified in the Specification;
				6. provide all equipment, tools and other items required to provide the Services, save as otherwise agreed in writing with the SSRO;
				7. use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the SSRO will be free for defects in workmanship, installation and design;
				8. obtain and at all times maintain all necessary licences and consents; and
				9. comply with all applicable laws, enactments, orders, regulations and other similar instruments as amended from time to time.
		3. The Contractor warrants and represents that:
			- 1. it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor; and
				2. it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of the Contract.
		4. The Contractor agrees that any breach of clauses 4.2 and 4.3 shall be remedied as a matter of urgency at no additional cost to the SSRO.
		5. The Contractorshall attend review meetings and submit performance reports on the dates, times and in the form specified in the Specification, or as otherwise reasonably required by the SSRO.
		6. The Contractor shall make adjustments to the Services in response to any reasonable request from the SSRO.
		7. The Contractor shall notify the SSRO as soon as it becomes aware of an event occurring or which it believes is likely to occur which will cause material delay to or materially impede the performance of the Services or any part thereof and the Contractor shall take all necessary steps consistent with good practice to minimise the delay to the SSRO.
		8. In the event that the Contractor fails due to its default to fulfil an obligation by the date specified in the Contract (or such incidental documents created during the Contract Period, including but not exclusively Court Orders) for such fulfilment, the Contractor shall, at the request of the SSRO and without prejudice to the SSRO's other rights and remedies under the Contract, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter and at no additional charge to the SSRO.
		9. If any obligation of the Contractor specified in the Contract is delayed as a result of a default by the SSRO, then:
			- 1. both parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the Services; and
				2. if there is a resultant delay, the date associated with the relevant obligation as specified in the Contract (and the dates similarly associated with any subsequent obligations specified in the Contract) shall be amended by a period of time equal to the period of delay resulting from such SSRO’s default (or such other period as the parties may agree in writing).
		10. The Contractor shall not instruct, or cause to be instructed, any third party or otherwise incur liabilities in the name of the SSRO without the prior written consent of the Client Officer.
		11. The Contractor accepts that the SSRO shall have the right after consultation with the Contractor to require the removal of any person (including Key Personnel) from involvement in the performance of the Services if in the SSRO’s reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract.
		12. The Contractor shall provide the Services and comply with the terms of the Contract in such a way so as not to cause any undue injury or damage to the image or reputation of the SSRO.

## Additional Services

* + 1. The SSRO may, from time to time during the Contract Period, request the Contractor to provide certain additional services.
		2. When it becomes apparent to the SSRO that it may require the Contractor to provide additional services, it shall raise the matter with the Contractor. In doing so the SSRO shall provide sufficient information to enable the Contractor to confirm whether they can deliver those additional services and to prepare a proposal for how those additional services will be delivered.
		3. Any binding agreement as to the additional services shall only come into existence upon an agreement in writing between the Parties.

## Charges and Payment

* + 1. The Charges shall be the full and exclusive remuneration of the Contractor for delivery of the Services, save for any disbursements the SSRO agrees to pay under clause 7.
		2. The total Charges payable by the SSRO to the Contractor under this Contract shall in no event exceed the Charges Cap and the SSRO shall have no liability towards the Contractor for any Charges or other costs claimed in excess of the Charges Cap.
		3. The Contractor must submit invoices for payment, which must be valid for VAT purposes. The SSRO will pay the Contractor such VAT as is chargeable on the delivery and supply of the Services.
		4. Invoices shall be submitted within 30 days of completion of the Services (or as otherwise agreed in writing between the Parties). Attached to the invoice shall be a detailed bill of costs in respect of each matter worked on to include, at least, the following information:
			- 1. for all cases or matters:

Matter name;

SSRO Officer’s name;

Purchase order number provided by the SSRO; and

Type of activity,

* + - * 1. for hourly or daily paid or capped fee cases or matters:

Hourly or daily rate or unit price apportionment;

Detailed breakdown of time spent per activity, per day and per individual (as per clause 6.5); and

Running total of fees accrued to date on each matter included in that bill, and

Any discount applied (where applicable)

* + - * 1. for fixed fee matters: full details of the matter and the fee charged, and
				2. a breakdown of any disbursements which the SSRO has agreed to pay.
		1. The Contractor shall not charge the SSRO for time spent on administration associated with preparing to carry out the Services, preparing invoices, managing or training staff, or on administrative or secretarial work.
		2. The SSRO shall pay undisputed sums to the Contractor within 30 days of receipt of a valid invoice.

## Disbursements

* + 1. The Contractor shall not incur any disbursements in carrying out the Services without the prior written agreement of the SSRO. The SSRO will reimburse the Contractor for disbursements which it has agreed in writing to pay, but otherwise the Charges specified in the Pricing Schedule shall be deemed to include all fees, charges, disbursements, costs, expenses and other associated expenditure incurred in providing the Services, including all materials and utility costs.

## Third Party disclaimer and records

* + 1. Neither the Deliverables nor any of the Services provided pursuant to the Contract are intended, either expressly or be implication, to confer any benefit on any third party and the Contractor’s liability to any third party is expressly disclaimed. Any third party that has access to and seeks to rely upon the Deliverables does so at their own risk and without recourse to the Contractor, save where it is expressly agreed in advance that they may rely on the Deliverables or Services.
		2. The Contractor shall keep and maintain until six months after the Contract Period, or as long a period as may be agreed between the parties, full and accurate records of the agreement including:
1. The Services provided under it;
2. all expenditure reimbursed by the SSRO;
3. all payments made by the SSRO.
	* 1. The contractor shall on request afford the SSRO or the SSRO’s representatives such access to the records referred to in clause 8.2 as may reasonably be required in connection with the agreement.

## Performance Review

* + 1. At regular intervals throughout the Contract Period, as reasonably determined by the SSRO, the SSRO and the Contractor shall meet to discuss and review the performance of the Contract.

## Meetings

* + 1. The Contractor will attend such meetings as are set out in the Specification.
		2. All the Contractor’s costs and expenses associated with attendance at meetings in performing work under the Contract shall be deemed to be included in the Charges.

## Stages and Performance

* + 1. Upon completion of the Services, or at the end of any Stage (where applicable) the Contractor shall notify the SSRO that the Services or as the case may be the relevant Stage is complete.
		2. Upon notification in accordance with clause 11.1, the SSRO will review the performance of the relevant Services.
		3. Notwithstanding any other legal right of the SSRO (either as stated in the Contract or under the law as specified in clause 28 of the Contract), where a review of the Services identifies that any part of the Services has not been provided in accordance with the Contract, then the SSRO may require either:
			- 1. the Contractor to re-perform such Services until the relevant part of the Services have been completed in accordance with the Contract entirely at the Contractor’s risk and expense; or
				2. a reduction in any sum owing to the Contractor in such amount as is proportionate to the level which the performed Services failed to meet the requirements of the Contract.
		4. Where re-performance is required of part or all of the Services, the SSRO shall:
			- 1. set a reasonable timescale for the re-performance; and
				2. review the re-performed Services and clause 11 shall apply.

## Intellectual Property Rights

* + 1. The SSRO will own the intellectual property rights in the final version of the Deliverables, subject to payment of the Charges, however the intellectual property rights in any materials created by or licensed to the Contractor outside of the performance of the Services will be owned by the Contractor (or by its licensors) and the SSRO will have a non-exclusive, not-transferable licence to use such materials for the purposes for which the Deliverables were provided. The Contractor shall seek the consent of the SSRO to use any intellectual property in the Deliverables that is owned by the SSRO, which consent shall not be unreasonably withheld.

## Use of SSRO Facilities

* + 1. Where the Contractor is required to enter onto premises owned or operated by the SSRO or a third party, for the purposes of delivering the Services, the Contractor shall abide by all reasonable instructions of the person or persons in charge of such premises, including in relation to health and safety.
		2. Such instructions referred to in clause 13.1 may include (but not exclusively):
			- 1. wearing identification badges;
				2. exclusion from restricted areas; and
				3. compliance with emergency evacuation procedures.
		3. Notwithstanding the provisions of this clause, the Contractor is responsible for the health and safety of its own staff whilst the staff are present at such premises.

## Termination

* + 1. The SSRO may terminate the Contract forthwith by notice in writing given to the Contractor in the event that:
			- 1. the Contractor commits a material or persistent breach of the Contract and, in respect to a non-material breach, fails to remedy the breach within seven days of receipt of notice in writing of the breach;
				2. the Contractor suspends or threatens to suspend, or ceases or threatens to cease, all or a substantial part of the Contractor’s business;
				3. the Contractor (or a partner of the Contractor) suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed by legislation to be unable to pay its debts or as having no reasonable prospect of doing so;
				4. the Contractor is bankrupt or the subject of a bankruptcy petition;
				5. the Contractor enters into negotiations for, or makes, a voluntary agreement with its creditors to compromise, reschedule or arrange repayment of outstanding sums;
				6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor;
				7. an administrator and or administrative receiver is appointed to manage the affairs of the Contractor, or an application is made to a court for the same;
				8. a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
				9. a creditor or other entitled person attaches or takes possession of the whole or any part of the Contractor’s assets, or a distress, execution, sequestration or other such process is levied, enforced or sued against the Contractor’s assets and such process is not discharged within 14 days;
				10. any event occurs, or proceeding is taken with respect to the Contractor in any jurisdiction that has an effect equivalent or similar to clause 14.1(b) to 14.1(i);
				11. the Contractor’s business is taken over in whole or in part either by sale of a controlling interest in the share capital of the Contractor or by a sale of the assets relevant to the part of the Contractor’s business that is performing the Contract;
				12. the Contractor dies or, by reason of illness or incapacity, is incapable of managing the Contractor’s affairs for a period of time; and
				13. Any part of the Contractor’s Proposal, including the Compliance Forms, is found to be incorrect, false or misleading.
		2. The SSRO may terminate the Contract for any reason whatsoever by giving two weeks’ written notice to the Contractor.
		3. For the avoidance of doubt, the allowance by the Contractor of the actions detailed in clause 14.1 and the subsequent sub-clauses constitute a material breach of the Contract.
		4. The right for the SSRO to terminate the Contract pursuant to this clause 14 shall be without prejudice to any other right to terminate expressly referred to elsewhere in this Contract.

## Liability and insurance

* + 1. Neither Party shall be liable to the other Party for any:
			- 1. indirect, special or consequential loss;
				2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
		2. The Contractor’s aggregate liability to the SSRO of whatever nature, whether in contract, tort or otherwise, for any loss whatsoever and howsoever caused by or arising from this Engagement, shall not exceed the amount in respect of which the Contractor is required to have in professional indemnity insurance cover at clause 15.5(iii).
		3. For all services where any loss is suffered by the SSRO for which the Contractor would otherwise be jointly and severally liable with any third parties, the extent to which such loss shall be recoverable by the SSRO from the Contractor, as opposed to the third party, shall be limited so as to be in proportion to the Contractor’s contribution to the overall fault for such damage or loss, as agreed between the parties, or in the absence of agreement, as finally determined by an English Court (ignoring for these purposes the ability of the third party to pay or any limitation of liability that the SSRO might have agreed with such third party).
		4. Nothing in this Contract shall exclude or restrict the liability of any person for that person’s fraud or dishonesty or purport to exclude or restrict a liability which cannot be excluded or restricted by law.
		5. Throughout the Contract Period and for two years afterwards the Contractor shall take out and maintain with a reputable insurance company on generally available commercially acceptable terms:

public liability insurance with a minimum cover of five million pounds for each and every claim or series of claims arising out of one event;

employer’s liability insurance with a minimum cover of five million pounds; and

professional indemnity insurance with a minimum cover of one million pounds for each and every claim or series of claims arising out of one event.

* + 1. From time to time when reasonably requested by the SSRO the Contractor shall send to the SSRO proof of payment of the premiums in respect of the insurance and a copy of the policy schedule and any other reasonable information for the SSRO to satisfy itself that the insurances referred to in clause 15.5 are in effect.

## Transfer and Sub-Contracting

* + 1. The SSRO may assign, novate, or sub-contract the whole or any part of the Contract to any body which performs functions previously performed by the SSRO upon giving written notice to the Contractor.
		2. The Contractor shall not assign or sub-contract the whole or any part of the Contract or the Services without the prior written consent of the SSRO, which consent shall not be unreasonably withheld or delayed but may be given subject to such conditions, if any, as the SSRO in its sole discretion may consider reasonable or necessary to protect the interests of the SSRO.
		3. The Contractor shall submit any request for the SSRO’s consent to sub-contract in writing to the Client Officer and shall provide:
			- 1. the name of the proposed sub-contractor;
				2. a statement of the work to be carried out;
				3. a statement of whether any Secret Matter or Sensitive Information will be disclosed to the sub-contractor;
				4. a statement of whether the sub-contractor is located in another country; and
				5. any other details known to the Contractor which the SSRO shall reasonably require.
		4. Where the Contractor assigns or sub-contracts the whole or any part of the Contract without the consent referred to in clause 16.2 (without limitation whether or not due to company take-over by asset or share sale) the SSRO may terminate the Contract forthwith.
		5. If consent is granted by the SSRO for the Contractor to sub-contract, any services, goods, or other supplies or works will remain the responsibility of the Contractor.
		6. Notwithstanding any sub-contract permitted under this clause, the Contractor shall remain responsible for providing the Services as if there had been no sub-contract and shall be responsible for the acts, defaults or neglect of any subcontractor, their employees or agents in all respect as if they were the acts, defaults or neglect of the Contractor.
		7. If so required by the SSRO any sub-contract shall be subject to the provision of collateral warranties, the form of which shall be subject to approval by the Client Officer.
		8. The Contractor undertakes to procure and agrees that it shall be a term of any sub-contract to which clause 16.7 refers that:
			- 1. the employment of the sub-contractor under the sub-contract shall terminate immediately upon the termination of (for whatsoever reason) the Contract; and
				2. the subcontractor’s services are being provided for the benefit of the SSRO and accordingly, unless the sub-contractor shall have provided a warranty to the SSRO in a form approved by the Client Officer, the SSRO shall be entitled to enforce the terms of the subcontract against the sub-contractor pursuant to section 1 of the Contracts (Rights of Third Parties) Act 1999.

## Force Majeure

* + 1. Neither party shall be liable to the other party for any failure to perform its obligations under the Contract where such failure to perform is due to circumstances beyond the reasonable control of the party who has failed to perform.
		2. Where the Contractor seeks to rely on clause 17.1 the SSRO shall not be liable to pay for the Services for the period during which the Contractor is seeking to rely on clause 17.1.

## Health and Safety

* + 1. The Contractor shall ensure that its personnel and any sub-Contractor and any other person acting on behalf of the Contractor complies with all legislation and governmental guidance (including in respect of Coronavirus (COVID-19)) in relation to the safety and health of its employees, of sub-contractors, of any other persons in or near the place where the Services are to be performed.
		2. Notwithstanding the generality of clause 18.1 the Contractor shall comply with:
			- 1. all legislation relating to health and safety at work;
				2. all specific requirements relating to health and safety contained in the Contract; and
				3. any reasonable instructions the SSRO may give to the Contractor in relation to health and safety.

## Freedom of Information

* + 1. The Contractor agrees to use all reasonable endeavours, at the Contractor’s expense, to assist the SSRO to comply with its legal obligations to disclose information, including under the Freedom of Information Act 2000 and the Data Protection Act 2018.
		2. The Contractor acknowledges that the SSRO may be obliged by law to disclose Information, either:
			- 1. without consulting the Contractor; or
				2. contrary to the views of the Contractor.
		3. The Contractor acknowledges that Confidential Information is indicative only and that the SSRO may be obliged by law to disclose Confidential Information.

## Confidentiality

* + 1. Subject to paragraphs 20.5 to 20.6 the Contractor shall:
			- 1. treat in confidence all Information it receives from the SSRO and only share Information with those SSRO employees specified in the Specification;
				2. not disclose any of that Information to any third party without the prior written consent of the SSRO, which consent shall not unreasonably be withheld;
				3. shall not use any of that Information otherwise than for the purpose of this Contract; and
				4. shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
		2. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the SSRO under or in connection with this Contract:
			- 1. is disclosed to its employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
				2. is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the SSRO under this Contract or any Sub-Contract under it.
		3. Subject to paragraphs 20.5 to 20.7, the SSRO shall:
			- 1. treat all Contractor’s Confidential Information as confidential and safeguard it accordingly;
				2. not disclose any Contractor’s Confidential Information without the prior written consent of the Contractor; and
				3. not use any Contractor’s Confidential Information otherwise than for the purpose of or in connection with the Contract.
		4. Each Party shall ensure that its employees are aware of the arrangements for discharging the obligations at paragraphs 20.1 to 20.3, as applicable, in relation to their receipt and use of Information and take such steps as may be reasonably practical to enforce such arrangements.
		5. Paragraphs 20.1 to 20.4 inclusive shall not apply to any Information to the extent that either Party:
			- 1. has the right to use or disclose the Information in accordance with other provisions of this Contract; or
				2. can show:

## that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;

## that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;

## that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or

## from its records that the same information was derived independently of that received under or in connection with this Contract,

## provided no other Information is revealed.

* + 1. Neither Party shall be in breach of paragraphs 20.1 to 20.4 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, regulatory, professional body, judicial or parliamentary obligation or was made to professional advisers and insurers insofar as such disclosure is required to protect the professional position of the Party. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and required to respect the confidentiality of the Information. Such disclosure shall in no way diminish the obligations of the Parties under paragraphs 20.1 to 20.4.
		2. The SSRO shall not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with a legal requirement, including the Freedom of Information Act 2000 (the ‘FOIA’) and the Environmental Information Regulations 2004 (the ‘EIR’). The SSRO may in its discretion consult the Contractor where the SSRO is considering the disclosure of Information under the FOIA or the EIR. The Contractor acknowledges and accepts that any representations on disclosure made during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOIA or the EIR is a matter in which the SSRO shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.

## Publicity

* + 1. The Contractor shall not, and shall procure that any member of the Contractor’s employees, agents and or subcontractors shall not, communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of the Contract without the prior written approval of the SSRO.
		2. Prior to giving its consent referred to in clause 21.1 the SSRO may require the inclusion of material into the release to represent the SSRO’s views.
		3. In any event the Contractor shall not publish any release to the media which is detrimental to the SSRO’s reputation.
		4. Either Party may make a public statement or announcement concerning the completion of the Contract if required by law.
		5. Subject to clause 20, the SSRO reserves the right to publish or disseminate information about the Contract as it may deem appropriate from time to time in order to raise the profile and awareness surrounding the Contract.

## Data Protection

* + 1. The Contractor shall comply with SCHEDULE 1 – Data Protection, which sets out the requirements for data protection.

## Not used

## Fraud

* + 1. The Contractor will use all reasonable endeavours and have reasonable business structures in place to safeguard against fraud and misapplication of funds in connection with this or any other agreement with the SSRO.
		2. The Contractor will notify the SSRO immediately on discovering any instance of suspected fraud or financial irregularity in connection with the performance of the Contract.
		3. If, in the reasonable opinion of the SSRO, the Contractor or any of its employees, officers, subcontractors or agents has committed or is committing fraud or is otherwise bringing the SSRO into disrepute, the SSRO shall give notice of its intention to terminate the Contract in writing. The Contractor shall have 14 days to respond in writing. If the Contractor either fails to respond within the 14 days or cannot reasonably substantiate what appears to be fraudulent or irregular financial activity then the SSRO may terminate the Contract forthwith.

## Prevention of Bribery and Corruption

* + 1. The SSRO shall be entitled in any of the circumstances set out in clauses 25.2 to 25.5 below to terminate the Contract forthwith and recover from the Contractor the amount of any loss resulting from such termination and damage to the SSRO’s reputation.
		2. The first set of circumstances are where the Contractor has:
			- 1. offered or given a financial or other advantage to any person as an inducement or reward to them to perform improperly a public function or business activity or knowing or believing the acceptance in itself would constitute improper performance; or
				2. requested or accepted an advantage or reward;

intending personally or through another to perform improperly a public function or business activity, or

when the request or acceptance would constitute improper performance of a public function or business activity, or

showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the SSRO; or

* + - * 1. improperly performed such a function or activity in anticipation of receiving such an advantage.
		1. The second set of circumstances are where the acts referred to in clauses 25.2(a) to 25.2(c) have been done by any person employed by the Contractor or acting on the Contractor’s behalf (whether or not the acts were performed with or without the knowledge of the Contractor).
		2. The third set of circumstances are where an associated person (including an employee, agent or subsidiary providing services for the organisation) bribes another person:
			- 1. to obtain or retain business for the organisation; or
				2. to obtain or retain an advantage in the conduct of business for the organisation.
		3. The fourth set of circumstances are where in relation to the Contract or any other agreement with the SSRO the Contractor shall have or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010.

## Third Party Rights

* + 1. The SSRO will not bring any claim in respect of any loss against any Employees save in so far as that claim arises out of the fraud of that person. This will not limit or exclude the liability of the Contractor for the acts or omissions of the Employees. Save for this provision, nothing in the Contract shall entitle any person who is not a party to the Contract to enforce any rights or obligations under the Contract in reliance on the Contracts (Rights of Third Parties) Act 1999.

## Equality and Diversity

* + 1. The Contractor shall ensure that it complies with all applicable statutory obligations arising under the Equality Act 2010, including without limitation those concerning non-discrimination in relation to:
			- 1. the running of the Contractor’s business;
				2. the performance of the Contract;
		2. Without prejudice to the generality of the foregoing, the Contractor will comply with the Equality Act 2010, the Human Rights Act 1998 and all other anti-discrimination legislation from time to time in force including all relevant regulations and statutory codes of practice.
		3. The Contractor shall comply with any request for information by the SSRO in order that the SSRO is able to discharge its obligations under the Equality Act 2010, the Human Rights Act 1998 and all other anti-discrimination legislation.

## Law and Jurisdiction

* + 1. The Contract shall be subject to the laws of England and Wales and both parties submit to the exclusive jurisdiction of the English courts.

## Waiver and cumulative remedies

* + 1. A waiver of any right under the Contract is only effective if it is in writing.
		2. The failure or delay by the SSRO to exercise any rights or remedies under the Contract shall not be deemed to be a waiver of any right of the SSRO under the Contract.
		3. Where the SSRO has expressly waived its rights under the Contract in respect of any occurrence such waiver shall not be deemed to be effective in respect of any subsequent occurrence.

## Conflict of Interest

* + 1. The Contractor acknowledges that the avoidance of conflicts of interest is critical to the SSRO. The Contractor shall at all times comply with this clause 30 (and in the event of a conflict or incompatibility between this clause and any policy of the Contractor, this clause 30 shall apply).
		2. During the Contract Period the Contractor shall at all times act in the best interests of the SSRO and shall at no time subordinate or otherwise undermine the SSRO’s interests to the advantage of its own interests or those of any third party.
		3. The Contractor shall immediately notify the Client Officer upon becoming aware of a Conflict of Interest and shall provide written notice to the SSRO within one Working Day of becoming aware of the Conflict of Interest.
		4. A notification given under clause 30.3 must contain, as a minimum, the following information:

the identity of the third party, including any individuals;

the nature of the relationship;

any representations made by the Contractor or the third party;

a detailed account of how the Contractor proposes to mitigate the risk and impact of the Conflict of Interest on the SSRO.

* + 1. The Contractor shall take all necessary measures to remove or avoid any Conflict of Interest. The Contractor shall provide evidence to the SSRO to demonstrate the measures that it has taken and shall comply with any request for information by the SSRO in relation to a notified Conflict of Interest.
		2. The SSRO shall determine whether any Conflict of Interest prevents the Contractor from acting for the SSRO.
		3. The SSRO may, at its sole discretion, terminate the Contract with immediate effect in the event that it determines that the Contractor is prevented from acting for the SSRO.

## Dispute Resolution

* + 1. If any dispute arises between the Parties to the Contract in connection with or arising out of the Contract, or the performance, validity or enforceability of it (the “Dispute”) the Parties shall follow the procedure set out in this clause.
			- 1. A Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (the “Dispute Notice”), together with relevant supporting documents.
				2. On service of the Dispute Notice, the Client Officer and the Contractor’s Manager shall attempt in good faith to resolve the Dispute.
				3. If the Client Officer and the Contractor’s Manager are for any reason unable to resolve the Dispute within 15 Working Days of service of the Dispute Notice, the Dispute shall be referred to SSRO’s Director of Resources (or in his absence another officer nominated by the SSRO’s Chief Executive) and the Contractor’s equivalent who shall attempt in good faith to resolve it.
				4. If the SSRO’s Director of Resources and the Contractor’s equivalent are for any reason unable to resolve the Dispute within 15 Working Days after the referral under clause 31.1(c), or either Party fails to participate or to continue to participate in the resolution process under clauses 3.1(b) or (c) or the resolution process terminates before the end of the period stated in each case, the Parties may resolve the dispute by other means.
		2. Unless the Contract has been terminated, the Contractor shall continue to perform its obligations in accordance with the Contract and shall give effect forthwith to all reasonable decisions, notices and instructions of the SSRO's Client Officer unless and until the same shall have been revised in any reference or proceeding commenced in accordance with clauses 31.1(b), (c) or (d).
		3. Unless the Contract has been terminated and subject to the Contractor’s compliance with clause 31.2, the SSRO shall continue to make all payments properly due and undisputed to the Contractor in accordance with the Contract pending resolution of a Dispute.

## Notices

* + 1. No formal notice or other communication from one party to the other shall have any validity under the Contract unless made in writing by or on behalf of the party concerned. For the purposes of the Contract “in writing” excludes facsimile.
		2. Any formal notice or other communication which is to be given by either party to the other must be by:
			- 1. hard copy letter format, which shall be given by letter (sent by hand or pre-paid first class post) and it shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or the same Working Day if personally delivered before midday and the next Working Day if delivered after midday; or
				2. email transmission, which for the SSRO shall be sent to the Client Officer’s notified email address and the Director of Resources (mike.wetherell@ssro.gov.uk), and for the Contractor shall be sent to the Contractor’s Manager’s notified email address. Emails shall be deemed to have been given on the same Working Day if sent before midday, and the next Working Day if sent after midday.
		3. In each case the notice must:-
			- 1. refer to the Contract; and
				2. be marked for the attention of the appropriate officer or department as notified to the other party in writing.
		4. Hard copy letter notices shall be sent to the address of the relevant Party stated at the beginning of the Contract or to such address as each Party shall notify the other in writing within 5 (five) Working Days of any change in its address for service.
		5. Any notice served on a non-Working Day shall be deemed to be served on the following Working Day.
		6. Any purported serving of a formal notice or communication in any other manner will be deemed ineffective.

## Variations to these Terms

* + 1. The terms and conditions of the Contract may only be varied by agreement between the Parties in writing.
		2. Where the Parties to the Contract enter into discussions with the intention to agree a variation to the terms of the Contract, the Contract shall remain un-amended and the Contractor’s performance of the Contract shall continue as if the terms were un-amended until such time as any relevant variation has been agreed in writing between the parties.

## Survival

* + 1. On termination or expiry of the Contract, the following clauses shall continue in force: clause 1 (definitions), clause 12 (intellectual property rights), clause 15 (liability and insurance), clause 20 (confidentiality), clause 28 (law and jurisdiction), clause 30 (conflicts of interest), 31 (dispute resolution) and 34 (general matters).
		2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## General matters

* + 1. Except as expressly stated in the Contract, all warranties and conditions, whether express or implied by statute, Common Law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by law.
		2. The Contract governs the overall relationship of the Contractor and the SSRO with respect to the provision of the Services.
		3. If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
		4. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## Priority of documents

36.1 In the event of ambiguity or inconsistency between the documents incorporated into the Contract, the following order of precedence shall apply:

i. The terms and conditions in the body of the Contract;

ii. Schedule 1: Data Protection

iii. Schedule 2: Specification (including Clarifications)

iv. Schedule 3: Contractor’s Proposal

v. Schedule 4: Invitation to Tender

This Agreement has been executed by the Parties on the date first before written

Executed by

**SINGLE SOURCE REGULATIONS OFFICE**

Under the hands of a

Duly authorised officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Executed by

**[ ]**

Acting by two directors

Director Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director Name (Print): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director Name (Print): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# SCHEDULE 1 – Data Protection

## Data Processor and Data Controller

* + 1. The Parties agree that, for the Protected Data, the SSRO shall be the Data Controller and the Contractor shall be the Data Processor.
		2. The Contractor shall comply with all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of the Contract.
		3. The Contractor shall not by any act or omission cause the SSRO (or any other person) to be in breach of any Data Protection Laws.
		4. The SSRO shall comply with all Data Protection Laws in respect of the performance of its obligations under this Contract.

## Instructions and details of processing

* + 1. Insofar as the Contractor processes Protected Data on behalf of the SSRO, the Contractor:
			- 1. unless required to do otherwise by applicable law, shall (and shall ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Processing Instructions; and
				2. if applicable law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the SSRO of any such requirement before processing the Protected Data (unless applicable Law prohibits such information on important grounds of public interest).
		2. The Contractor shall as soon as reasonably practicable inform the SSRO in writing if, in the Contractor’s opinion, a Processing Instruction infringes the Data Protection Laws or any other applicable laws relating to data protection and explain the reasons for its opinion.
		3. The processing to be carried out by the Contractor under the Contract shall comprise such processing as agreed by the parties in writing from time to time.

## Technical and organisational measures

* + 1. The Contractor shall implement and maintain, at its cost and expense, appropriate technical and organisational measures in relation to the processing of Protected Data by the Contractor:
			- 1. such that the processing will meet the requirements of Data Protection Laws and ensure the protection of the rights of Data Subjects;
				2. so as to ensure a level of security in respect of Protected Data processed by it that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed; and
				3. without prejudice to clause 3.1 of this Schedule insofar as is possible, to assist the SSRO in the fulfilment of the SSRO’s obligations to respond to Data Subject Requests relating to Protected Data.
		2. Without prejudice to clause 3.1 of this Schedule, the Contractor shall, in respect of the Protected Data processed by it under this Contract comply with the requirements regarding security of processing set out in Data Protection Laws (as applicable to Data Processors) and in this Contract.
		3. The Contractor shall not engage another Data Processor (or any replacement) for carrying out any processing activities in respect of the Protected Data without the SSRO’s prior written consent.
		4. The Contractor shall, by contract, require any Data Processor that it engages to comply with the obligations imposed by this Contract on the Contractor, when carrying out any processing activities in respect of the Protected Data.
		5. The Contractor shall ensure that any Employee and all other persons authorised by it, or by any person acting on its behalf (including by any Data Processor pursuant to clause 3.1 of this Schedule), to process Protected Data are subject to a binding written contractual obligation with the Contractor or with the Data Processor that has engaged them to keep the Protected Data confidential (except where disclosure is required in accordance with applicable law, in which case the Contractor shall, where practicable and not prohibited by applicable law, notify the SSRO of any such requirement before such disclosure).
		6. Without prejudice to any other provision of this Schedule, the Contractor shall ensure that any Employee processing Protected Data are reliable and have received adequate training on compliance with this Schedule and the Data Protection Laws applicable to the processing.
		7. The Contractor shall ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Services.

## Assistance with the SSRO’s compliance and Data Subject rights

* + 1. The Contractor shall (at no cost to the SSRO):
			- 1. promptly record and then refer all Data Subject Requests it receives to the SSRO within three Working Days of receipt of the request;
				2. provide such information and cooperation and take such action as the SSRO reasonably requests in relation to each Data Subject Request, within the timescales reasonably required by the SSRO; and
				3. not respond to any Data Subject Request or Complaint without the SSRO’s prior written approval.
		2. Without prejudice to clause 2.1 of this Schedule, the Contractor shall, at its cost and expense, provide such information, co-operation and other assistance to the SSRO as the SSRO reasonably requires (taking into account the nature of processing and the information available to the Contractor) to ensure compliance with the SSRO’s obligations under Data Protection Laws, including with respect to:
			- 1. security of processing;
				2. data protection impact assessments (as such term is defined in Data Protection Laws);
				3. prior consultation with a Supervisory Authority regarding high risk processing; and
				4. any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or Complaint, including (subject in each case to the SSRO's prior written authorisation) regarding any notification of the Personal Data Breach to Supervisory Authorities and/or communication to any affected Data Subjects.

## International data transfers

* + 1. The Contractor shall not transfer any Protected Data to any country outside the European Economic Area or to any International Organisation (an “International Recipient”) without the SSRO’s prior written consent.

## Records, information and audit

* + 1. The Contractor shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the SSRO, containing such information as the SSRO may reasonably require, including:
			- 1. the name and contact details of the Data Processor(s) and of each Data Controller on behalf of which the Data Processor is acting, and of the Contractor’s representative and data protection officer (if any);
				2. the categories of processing carried out on behalf of each Data Controller;
				3. where applicable, details of transfers of Protected Data to an International Recipient; and
				4. a general description of the technical and organisational security measures referred to in clause 3.1 of this Schedule.
		2. The Contractor shall make available to the SSRO on request in a timely manner (and in any event within three Working Days):
			- 1. copies of the records under clause 6.1 of this Schedule; and
				2. such other information as the SSRO reasonably requires to demonstrate the Contractor’s and the SSRO’s compliance with their respective obligations under Data Protection Laws and this Contract.
		3. If any audit or inspection reveals a material non-compliance by the Contractor with its obligations under Data Protection Laws or a breach by the Contractor of this Schedule, the Contractor shall pay the reasonable costs of the SSRO or its mandated auditors, of the audit or inspection.
		4. The Contractor shall promptly resolve, at its own cost and expense, all data protection and security issues discovered by the SSRO and reported to the Contractor that reveal a breach or potential breach by the Contractor of its obligations under this Schedule.
		5. The SSRO shall be entitled to share any notification, details, records or information provided by or on behalf of the Contractor under this Schedule with its professional advisors and the Supervisory Authority.

## Breach notification

* + 1. In respect of any Personal Data Breach, the Contractor shall:
			- 1. notify the SSRO of the Personal Data Breach without undue delay (but in no event later than 48 hours after becoming aware of the Personal Data Breach); and
				2. provide the SSRO without undue delay (wherever possible, no later than 48hours after becoming aware of the Personal Data Breach) with such details as the SSRO reasonably requires regarding:

the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Protected Data records concerned;

any investigations into such Personal Data Breach;

the likely consequences of the Personal Data Breach; and

any measures taken, or that the Contractor recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects,

provided that, (without prejudice to the above obligations) if the Contractor cannot provide all these details within the timeframes set out in this clause 7.1(b), it shall (before the end of such timeframes) provide the SSRO with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased), and give the SSRO regular updates on these matters.

* + 1. The Contractor shall promptly (and in any event within two Working Days) inform the SSRO if it receives a Complaint and provide the SSRO with full details of such Complaint.

## Deletion or return of Protected Data and copies

* + 1. The Contractor shall (and shall ensure that all persons acting on its behalf and any Employee shall) without delay (and in any event within three days), at the SSRO’s written request, either securely delete (to the extent that it is technologically able to do so) or securely return all the Protected Data to the SSRO in such form as the SSRO reasonably requests after the earlier of:
			- 1. the end of the provision of the relevant Services related to processing of such Protected Data; or
				2. once processing by the Contractor of any Protected Data is no longer required for the purpose of the Contractor’s performance of its relevant obligations under this Contract,

and securely delete existing copies (unless storage of any data is required by applicable law and, if so, the Contractor shall inform the SSRO of any such requirement).

## Conflicts

* + 1. Unless otherwise expressly stated in this Contract:
			- 1. the Contractor’s obligations and the SSRO’s rights and remedies under this Schedule are cumulative with, and additional to, any other provisions of this Contract;
				2. nothing in this Contract relieves the Contractor of any responsibilities or liabilities under any Data Protection Laws; and
				3. this Schedule shall prevail over any other provision of this Contract in the event of any conflict.

# SCHEDULE 2 – Specification and Clarifications

# SCHEDULE 3 – Contractor’s Proposal

# SCHEDULE 4 – Invitation to Tender