

Call off Contract Terms and Conditions

DATED

1st July 2019

**CONTRACT FOR THE PROVISION OF HMPPS PRISONER, FAMILY AND SIGNIFICANT
OTHER SERVICES**

between

HM PRISON BIRMINGHAM

and

HALOW (BIRMINGHAM)

THIS CONTRACT IS DATED: 1ST JULY 2019

PARTIES

- (1) HM Prison Birmingham on behalf of the Secretary of State for Justice of 102 Petty France, London, SW1H 9AJ (the **Customer**); and
- (2) HALOW (Birmingham) whose registered office is at St Martin's Youth & Community Centre, Gooch Street, Highgate Birmingham, B5 7HE (the **Supplier**).

BACKGROUND

- (A) The Authority placed a contract notice on 2017/S 008/011841 9th January 2017 in the Official Journal of the European Union seeking expressions of interest from potential suppliers for the provision of Services (divided into Lots) to Contracting Bodies under a framework agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential providers (including the Supplier) on 9th January 2017 to tender for the provision of HMPPS Prisoner, Family and Significant other services.
- (C) On the basis of the Supplier's Tender, the Authority selected the Supplier to enter the Agreement to provide services to Contracting Bodies who will place Orders in accordance with the Agreement.
- (D) The Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Supplier under the Agreement.
- (E) The Customer is a Contracting Body as specified in the Agreement. It has selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of the Contract.

GENERAL PROVISIONS

1. Definitions

In the Contract, unless the context otherwise requires, the following provisions have the meanings given to them below:

Agreement: the framework agreement for the provision of visitor services between the Authority and the Supplier dated 3rd May 2017.

Approval: the prior written approval of the Customer.

Auditor: the National Audit Office or an auditor appointed by the Customer as the context requires.

Authorised Representative: the persons respectively designated as such by the Customer and the Supplier in the Order Form.

Authority: the Secretary of State for Justice of 102 Petty France, London, SW1H 9AJ, being the contracting authority that established the Agreement.

Confidential Information: any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including trade secrets, Intellectual Property Rights, the know-how of either Party and all personal data and sensitive data within the meaning of the DPA.

Contract: the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses (except that, for the purposes of clause 49.3 only, reference to "Contract" shall not include the Order Form).

Contract Period: the period from the Service Commencement Date to:

- (a) the date of expiry set out in clause 3;
- (b) following an extension pursuant to clause 4, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Year: a period of 12 months commencing on the Service Commencement Date.

Contracting Body: a body identified in the Agreement as a potential purchaser of Services under the Agreement.

Controller: means as it is defined in GDPR.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

Customer Data: means:

- (a) the data, text drawings, diagrams, images or sounds (together with any database made up of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:
 - (i) provided to the Supplier by or on behalf of the Customer; or
 - (ii) generated, processed, stored or transmitted by the Supplier pursuant to the Contract
- (b) any Personal Data for which the Customer is the Data Controller.

Data Loss Event: means any event which results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data.

Data Protection Impact Assessment: means an assessment by the Controller of the effect of the envisaged processing on the protection of Personal Data.

Data Protection Legislation” means:

- (a) the GDPR, the LED and any applicable implementing laws;
- (b) the DPA 2018 to the extent that it relates to the processing of Personal Data and privacy; and
- (c) all applicable laws relating to the processing of Personal Data and privacy

Data Protection Officer” means as it is defined in the GDPR.

Data Subject” means as it is defined in the GDPR.

Data Subject Request: means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Dispute Resolution Procedure: the dispute resolution procedure in clause 47.

DPA 2018: means the Data Protection Act 2018.

GDPR: means the General Data Protection Regulation (Regulation (EU) 2016/679).

EIR: the Environmental Information Regulations 2004 (SI 2004/3391), and any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment: the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

ESF: the European Union's financial instrument for supporting employment.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, and any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to it.

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Supplier's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Information: has the meaning given under section 84 of the FOIA.

Initial Contract Period: the period set out in clause 3.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** refers to such materials.

Key Personnel: any person identified in the Order Form as being key personnel.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply.

Law Enforcement Purposes: means as it is defined in DPA 2018.

LED: means the Law Enforcement Directive (Directive (EU) 2016/680).

Management Information: the management information specified in the Order Form.

Month: calendar month.

NOMS: the National Offender Management Service.

Order: the order placed by the Customer to the Supplier in accordance with the Agreement, which sets out the Price, the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe and the Quality Standards.

Order Form: the document used to place the Order included in Schedule 3.

Parent Company: any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term **Holding Company** shall have the

meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: the Supplier or the Customer and **Parties** shall mean both the Supplier and the Customer.

Personal Data: means as it is defined in the GDPR.

Personal Data Breach: means as it is defined in the GDPR.

Premises: the location where the Services are to be supplied as set out in the Order Form.

Price: the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract for the Contract Period.

Processor: means as it is defined in GDPR.

Prohibited Act: the following constitute Prohibited Acts:

- (c) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (d) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Agreement or the Contract;
- (e) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Agreement, the Contract or any other contract with the Customer or the Authority; or
- (f) defrauding, attempting to defraud or conspiring to defraud the Customer or the Authority.

Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted.

Property: the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer.

Regulator Correspondence” means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the processing of Personal Data under the Contract.

Replacement Supplier: any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Request for Information: has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term "request" shall apply).

Restricted Country: means:

- a) any country outside the European Economic Area; and
- b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC.

Service Commencement Date: the service commencement date set out in the Order Form.

Services: the provision of HMPPS Prisoner, Family and Significant Other Services to be supplied as specified in the Order Form.

Staff: means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any of its Sub-Contractors engaged in the performance of the Supplier's obligations under the Contract.

Staff Vetting Procedures: the Customer's procedures and departmental policies for the vetting of personnel:

- (g) for eligibility to work in the UK;
- (h) for the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure

including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

- (i) in connection with the Protection of Freedoms Act 2012;
- (j) in connection with the Disclosure and Barring Service; and
- (k) for the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Sub-Contract: any contract between the Supplier and a third party under which the Supplier sources provision of any of the Services from that third party.

Sub-Contractor: the contractors who enter into a Sub-Contract with the Supplier.

Sub-processor: means any third party appointed to process Personal Data on behalf of the Supplier related to the Contract.

Tender: the documents submitted by the Supplier to the Authority for admission to the Agreement as supplemented by the documents submitted to the Customer in response to a mini-competition organised or participated in by the Customer, including the Supplier's Supplemental Tender (as defined in the Agreement).

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246).

Variation: has the meaning given to it in clause 34.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Day: any day on which the Premises are open to visitors.

2. Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references to a clause or a Schedule without further designation shall be construed as a reference to a clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph without further designation shall be construed as a reference to the paragraph of the relevant Schedule to the Contract so numbered.

3. Initial Contract Period

The Contract takes effect on the Service Commencement Date and expires automatically on the date set out in the Order Form unless it is otherwise extended or terminated in accordance with the Contract.

4. Extension of Initial Contract Period

The Customer may, by giving written notice to the Supplier of not less than 3 Months before the last day of the Initial Contract Period, extend the Contract for any further period or periods specified in the Order Form provided that the total Contract Period does not exceed 4 years. The provisions of the Contract apply throughout any extended period.

5. Supplier's status

The Supplier is an independent entity and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted in the Contract.

6. Customer's obligations

Except as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Customer in any other capacity, and the exercise by the Customer of its duties and powers in any other capacity shall not lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.

7. Mistakes in Information

The Supplier is responsible for the accuracy of all documents and information it supplies to the Customer in connection with the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

8. Services

8.1 The Supplier shall supply the Services in accordance with the Customer's requirements set out in the Contract in consideration for the payment of the Price. The Customer may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours.

8.2 The Supplier has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer before submitting its Tender and Supplemental Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

8.3 The Supplier shall at all times:

- (a) comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
- (b) comply with policies, instructions and guidance notes published by NOMS from time to time, including PSI 15/2011, PSI 16/2011 and PSI 01/2016 (as updated), and made available to the Supplier;
- (c) comply with its obligations regarding the ESF set out in Schedule 5;
- (d) perform its obligations under the Contract in accordance with the Law and Good Industry Practice;
- (e) employ sufficient Staff to fulfil its obligations under the Contract; and
- (f) ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

8.4 If requested by the Customer or the Authority, the Supplier shall promptly provide evidence of the qualifications and competence of Staff referred to in clause 8.3 (f).

9. Provision and removal of Equipment

9.1 Unless otherwise stated in the Order Form, the Supplier shall provide all Equipment necessary for the supply of the Services.

9.2 The Supplier shall not deliver any Equipment or begin any work on the Premises without Approval.

- 9.3 All Equipment brought onto the Premises is at the Supplier's own risk and the Customer has no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises remains the property of the Supplier.
- 9.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment that in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 9.6 On completion of the Services, the Supplier shall remove the Equipment and any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

10. Supplier's Staff

- 10.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

- 10.2 At the Customer's written request, the Supplier shall provide a list of the names of all persons who may require admission to the Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 10.3 If the Supplier does not comply with clause 10.2 within 24 hours of the request the Customer may deny Staff entry to the Premises. Exercise of the Customer's rights under this clause 10.3 shall not excuse the Supplier from any attributable failure to perform the Services.

- 10.4 Staff engaged on the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Supplier from time to time for the conduct of personnel when on the Premises.
- 10.5 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Supplier at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.
- 10.6 The Supplier shall comply with its employment and TUPE related obligations set out in Schedule 1.

11. Licence to occupy Premises

- 11.1 Any land or Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 11.2 The Supplier shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- 11.3 Should the Supplier require modifications to the Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. Ownership of such modifications shall rest with the Customer. Before the end of the Contract Period, the Supplier shall, at the request of the Customer, remove any modifications made to the Premises and reinstate or rebuild the Premises in a manner equivalent in size, quality, layout and facilities to the Premises prior to the modifications.
- 11.4 Without prejudice to clause 10.4, the Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear including damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 11.5 The Customer does not intend to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and no such tenancy has or shall come into being.

- 11.6 Notwithstanding any rights granted under the Contract, the Customer may at any time use any premises owned or occupied by it in any manner it sees fit.

12. Security of premises

- 12.1 The Supplier shall comply with its obligations in connection with prison security set out in Schedule 2.

13. Property

- 13.1 If the Customer issues Property to the Supplier, such Property remains the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover that Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.
- 13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within 5 Working Days of receipt.
- 13.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 13.4 The Supplier shall ensure the security of all the Property while in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements.
- 13.5 The Supplier is liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

14. Environmental requirements

The Supplier shall, when working on the Premises, perform its obligations under the Contract in a way which conserves energy, water, wood, paper and other resources, reduces waste and phases out the use of ozone depleting substances and minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

15. Health and safety and Equality

Health and Safety

- 15.1 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 15.2 The Supplier shall:
- (a) promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract;
 - (b) immediately notify the Customer if any incident occurs in the performance of its obligations under the Contract on the Premises if that incident causes any personal injury or damage to property which could give rise to personal injury;
 - (c) comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract; and
 - (d) ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

Equality

- 15.3 The Supplier shall:
- (a) comply with the Equality Act 2010 and relevant codes of practice (Equality Provisions);
 - (b) take all reasonable steps to procure the observance of the Equality Provisions by its Staff;
 - (c) provide the Customer on reasonable request with information regarding its compliance with clauses 15.3(a) and 15.3(b); and
 - (d) promptly notify the Customer in writing if there is any investigation or proceedings brought against it or any of its Staff under the Equality Provisions.

16. Price

- 16.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Price in accordance with clause 17.

- 16.2 The Customer shall, in addition to the Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

17. Payment and VAT

- 17.1 The Supplier shall ensure that each invoice is submitted in accordance with the payment profile set out in the Order Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Customer to substantiate the invoice.
- 17.2 If the Supplier submits an invoice to the Customer in accordance with clause 17.1, the Customer will consider and verify that invoice within 10 days.
- 17.3 The Customer shall pay the Supplier any sums due under such an invoice no later than 30 days after the date on which the Customer determines the invoice is valid and undisputed.
- 17.4 If the Customer does not comply with clause 17.3, the invoice shall be regarded as valid and undisputed 15 days after the date on which it is received by the Customer.
- 17.5 If the Supplier enters into a Sub-Contract the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 17.2 to 17.4; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 17.2 to 17.4.

In this clause 17.5 "Sub-Contract" means a contract between 2 or more suppliers, at any stage of remoteness from the Customer in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract.

- 17.6 The Supplier shall add VAT to the Price at the prevailing rate as applicable.
- 17.7 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 17.7 shall be paid by the Supplier to the Customer not less than 5 Working Days before the date on which the tax or other liability is payable by the Customer.

- 17.8 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under clause 42 for failure to pay undisputed sums of money.

18. Recovery of sums due

- 18.1 If under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Customer.
- 18.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 18.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 18.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

19. Conflicts of interest

- 19.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 19.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 19.1 arises or is reasonably foreseeable.
- 19.3 The Customer may terminate the Contract immediately by giving written notice to the Supplier and/or to take such other steps it deems necessary if, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the Contract. The actions of the Customer under this clause 19.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

20. Prevention of bribery

20.1 The Supplier:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with the Contract commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer or the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of the Contract.

20.2 The Supplier shall:

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- (b) within 60 Working Days of the Services Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 20 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;
- (c) have an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate; and
- (d) notify the Customer immediately if any breach of clause 20.1 is suspected or known.

20.3 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clause 20.1 it shall respond promptly to the Customer's enquiries, co-operate with any investigation and allow the Customer to audit any relevant documents. This obligation shall continue for 6 years following the expiry or termination of the Contract.

20.4 The Customer may terminate the Contract by written notice with immediate effect if the Supplier or its Staff (whether or not acting with the Supplier's knowledge) breaches clause 20.1.

20.5 Any notice of termination under clause 20.4 must specify:

- (a) the nature of the Prohibited Act;

- (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
- (c) the date on which the Contract will terminate.

20.6 Despite clause 47, any dispute relating to:

- (a) the interpretation of clause 20; or
- (b) the amount or value of any gift, consideration or commission

shall be determined by the Customer and its decision shall be final and conclusive.

20.7 Any termination under clause 20 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

21. Confidentiality

21.1 Subject to clause 21.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

21.2 Clause **Error! Reference source not found.** shall not apply to any disclosure of information by the Customer:

- (a) required by any applicable law, provided that clause 24 shall apply to any disclosures required under the FOIA or the EIR;
- (b) that is reasonably required by persons engaged by the Customer in the performance of its obligations under the Contract;
- (c) if the Customer can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause **Error! Reference source not found.**;
- (d) of any document to which it is a party and which the Parties have agreed contains no Confidential Information;
- (e) to enable a determination to be made under clause 47;
- (f) which is already lawfully in the possession of the Customer before its disclosure and the Customer is not under any obligation of confidence in respect of that information;
- (g) to any part of the Crown;
- (h) to the National Audit Office;
- (i) to Parliament and Parliamentary committees; and
- (j) relating to the Contract and in respect of which the Supplier has given its prior written consent to disclosure.

- 21.3 On or before the expiry of the Contract, the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Customer's employees or Service users, are delivered up to the Customer or securely destroyed.

22. Official Secrets Acts 1911 to 1989

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

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

- 22.2 If the Supplier or its Staff fail to comply with this clause 22, the Customer may terminate the Contract immediately on written notice to the Supplier.

23. Customer Data and Personal Data

- 23.1 The Supplier shall:

- (a) not store, copy, disclose, or use Customer Data except as necessary for the performance by the Supplier of its obligations under the Contract or as Approved;
- (b) preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data;
- (c) not delete or remove any proprietary notices contained within or relating to Customer Data;
- (d) to the extent that Customer Data is held and/or Processed by the Supplier, supply Customer Data to the Customer as requested by the Customer in the format specified by the Customer;
- (e) perform secure back-ups of all Customer Data and ensure that up-to-date back-ups are stored securely off-site. The Supplier shall ensure that back-ups are made available to the Customer immediately on request;
- (f) identify, and disclose to the Customer on request Staff with access to or who are involved in handling Customer Data;
- (g) on request, give the Customer details of its policy for reporting, managing and recovering from information risk incidents including losses of Personal Data, and its procedures for reducing risk; and
- (h) notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take if it reasonably believes that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason.

- 23.2 If Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, the Customer may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data and the Supplier shall do so promptly; and/or
 - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 23.3 The Parties acknowledge that for the purposes of Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing which the Customer has authorised the Supplier to do is described in the Contract.
- 23.4 The Supplier shall:
- (a) notify the Customer immediately if it considers any Customer instructions infringe the Data Protection Legislation;
 - (b) provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to starting any processing. Such assistance may, at the Authority's discretion, include:
 - i) a systematic description of the envisaged processing operations and the purpose of the processing;
 - ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
 - (c) in relation to any Personal Data processed in connection with its obligations under the Contract:
 - i) process that Personal Data only in accordance with the Contract unless the Supplier is required to do otherwise by law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by law;
 - ii) ensure that it has in place Protective Measures having taken account of the nature of the data to be protected, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures
 - (d) ensure that:
 - i) Staff do not process Personal Data except in accordance with the Contract;
 - ii) it takes all reasonable steps to ensure the reliability and integrity of Staff who have access to Personal Data and ensure that they:
 - A) are aware of and comply with the Supplier's duties in the Contract;

- B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by the Contract; and
 - D) have undergone adequate training in the use, care, protection and handling of the Personal Data
- (e) not transfer Personal Data outside the EU unless approved by the Customer and:
 - i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer in accordance with GDPR Article 46 as determined by the Customer;
 - ii) the Data Subject has enforceable rights and effective legal remedies;
 - iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data
- (f) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Supplier is required by law to retain the Personal Data;
- (g) subject to clause 23.5, notify the Customer immediately if it:
 - i) receives a Data Subject Request (or purported Data Subject Request);
 - ii) receives a request to rectify, block or erase any Personal Data;
 - iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
 - v) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - vi) becomes aware of a Data Loss Event.

23.5 The Supplier's obligation to notify under clause 23.4 (g) includes the provision of further information to the Customer in phases as details become available.

- 23.6 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 23.4 (g) (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event; and
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office or any consultation by the Customer with the Information Commissioner's Office.
- 23.7 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this schedule. This requirement does not apply if the Supplier employs fewer than 250 people unless the Customer determines that the processing:
- (a) is not occasional;
 - (b) includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.8 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 23.9 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 23.10 Before allowing any Sub-processor to process any Personal Data in connection with the Contract, the Supplier shall:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain Approval;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms of this clause 23 such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer reasonably requires.
- 23.11 The Supplier remains fully liable for the acts and omissions of any Sub-processor.
- 23.12 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause 23 by replacing it with any applicable controller to processor standard

clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

23.13 The Parties shall take account of any guidance published by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance published by the Information Commissioner's Office.

23.14 In relation to Personal Data processed for Law Enforcement Purposes, the Supplier shall:

(a) maintain logs for its processing operations in respect of:

- i) collection;
- ii) alteration;
- iii) consultation;
- iv) disclosure (including transfers);
- v) combination; and
- vi) erasure.

(together the **Logs**).

(b) ensure that:

- i) the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;
- ii) the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure; and the identity of the recipients of the data; and
- iii) the Logs are made available to the Information Commissioner's Office on request

(c) use the Logs only to:

- i) verify the lawfulness of processing;
- ii) assist with self-monitoring by the Customer or (as the case may be) the Supplier, including the conduct of internal disciplinary proceedings;
- iii) ensure the integrity of Personal Data; and
- iv) assist with criminal proceedings

(d) as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

(e) where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

- i) persons suspected of having committed or being about to commit a criminal offence;
- ii) persons convicted of a criminal offence;
- iii) persons who are or maybe victims of a criminal offence; and
- iv) witnesses or other persons with information about offences.

24. Freedom of Information

24.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall:

- (a) provide assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIR;
- (b) transfer to the Customer all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Customer 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
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Customer.

24.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIR to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Customer shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

25. Publicity, media and official enquiries

25.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval.

25.2 The Customer may publicise the Contract in accordance with any legal obligation on the Customer including any examination of the Contract by the Auditor.

- 25.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

26. Intellectual Property Rights

- 26.1 The Supplier retains ownership of all Intellectual Property created by the Supplier or any Staff:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services.

- 26.2 The Supplier hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property and shall allow the Customer to use the Intellectual Property for any purpose relating to the performance of the Contract provided in each case that such rights do not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including a Replacement Supplier or other third party invited by the Customer to participate in a tendering process for the award of a contract to deliver services to replace the Services).

- 26.3 The Supplier indemnifies the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

27. Records and audit access

- 27.1 The Supplier shall keep and maintain for 12 years after the end of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services, the contracts entered into with the Customer and the amounts paid by the Customer.

- 27.2 The Supplier shall keep the records and accounts referred to in clause 27.1 in accordance with good accountancy practice.

- 27.3 The Supplier shall on request allow:

- (a) the Customer;
- (b) the Customer's representatives;
- (c) the Auditor;
- (d) the ESF's auditor
- (e) the European Court of Auditors;
- (f) the European Commission's auditors; and
- (g) the National Audit Office

access to such records and accounts as required by the Customer from time to time.

27.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Customer and the Auditor.

27.5 Subject to the Customer's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the Customer within the scope of the audit;
- (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
- (c) access to Staff.

27.6 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 27 unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

28. Provision of information and meetings

28.1 The Supplier shall submit Management Information to the Customer throughout the Contract Period on the last day of every Month.

28.2 The Authorised Representatives shall meet monthly or as directed by the Authority to monitor and evaluate the Supplier's performance, to review the Management Information and to discuss any issues in respect of the Services.

28.3 The Authority may invite other Authority staff to attend the monthly meetings from time to time.

29. Monitoring of Contract performance

The Supplier shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

30. Remedies for inadequate performance

30.1 If a complaint is received about the standard of Services or about the manner in which any Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, the Customer may investigate the complaint, may uphold the complaint and may, acting reasonably:

- (a) subject to clause 30.4, withhold a sum; or
- (b) deduct a sum

in each case equal to a maximum of 5% of the Price payable in respect of the Month in which the complaint arose.

30.2 The Parties agree that a deduction made pursuant to clause 30.1(b) represents a genuine pre-estimate of the loss likely to be suffered by the Customer.

30.3 If the Customer withholds a sum pursuant to clause 30.1(a) that sum shall be paid to the Supplier when, in the Customer's reasonable opinion, the matters complained of have been rectified and there has been no repeat of those matters for 3 Months.

30.4 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, the Customer may, without prejudice to its rights under clause 42:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier has demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services

and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.

30.5 If the Supplier does not supply any of the Services in accordance with the Contract and such failure is capable of remedy, the Customer may instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days of the Customer's instructions or such other period of time as the Customer may direct.

30.6 If the Supplier:

- (a) fails to comply with clause 30.5 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with clause 30.5

the Customer may terminate the Contract with immediate effect by giving the Supplier written notice.

31. Rights and remedies

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

32. Transfer and sub-contracting

32.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

32.2 Provided it has Approval, the Supplier may novate the Contract following the novation of the Agreement if:

- (a) the specific change in supplier was provided for in the procurement process which established the Agreement;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process which established the Agreement.

32.3 The Supplier is responsible for the acts and omissions of its Sub-Contractors as though they are its own.

32.4 If the Customer consents to the award of Sub-Contracts the Supplier shall ensure that:

- (a) copies of each Sub-Contract are, at the request of the Customer, sent to the Customer as soon as reasonably practicable;
- (b) the Sub-Contract contains a right for the Supplier to terminate the Sub-Contract if the Sub-Contractor does not comply with its obligations under environmental, social or labour law; and
- (c) the Sub-Contractor includes similar provisions to those in clause 33.4(b) in any Sub-Contract which it awards.

32.5 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any other part of the Crown;
- (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or
- (c) any private sector body which substantially performs the functions of the Customer

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

33. Waiver

33.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

33.2 A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, and shall not prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

34. Variation

34.1 Subject to the provisions of this clause 34, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order (a Variation).

34.2 The Customer may request a Variation by completing and sending the Variation form attached at Schedule 4 (the **Variation Form**) to the Supplier, giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

34.3 If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Price, the Customer may:

- (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- (b) terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

34.4 If the Parties agree the Variation and any variation in the Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

35. The Contracts (Rights of Third Parties) Act 1999

35.1 Except as expressly provided in the Contract, a person who is not a Party shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act and does not apply to the Authority, the Crown or a Replacement Supplier.

36. Severance

36.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 37 shall not affect the validity and enforceability of the remainder of the Contract.

36.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

37. Liability, indemnity and insurance

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

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;

- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under clause 17.7;
- (e) any claim under clause 39; or
- (f) any claim under the indemnity in clause 26.3.

37.2 Subject to clauses 37.3 and 37.4, the Supplier indemnifies and keeps indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense 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 Contract.

37.3 Subject to clauses 37.1 and 37.4, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall not exceed £5,000,000 (five million pounds); and
- (b) the annual aggregate liability under the Contract of either Party for all Defaults shall not exceed the greater of 125% (one hundred and twenty five per cent) of the Price payable by the Customer to the Supplier in the Contract Year in which the liability arises.

37.4 Subject to clause 37.1, neither Party is liable to the other Party for any:

- (a) loss of profits, business or revenue;
- (b) loss of or damage to goodwill;
- (c) loss of savings (whether anticipated or otherwise); or
- (d) any indirect or consequential loss or damage.

37.5 The Customer may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Supplier's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and

- (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.

38. Insurances

- 38.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance with effect from the Service Commencement Date providing an adequate level of cover in respect of the risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss (the Policies).
- 38.2 The Supplier shall give the Customer, on request, copies of the Policies or a broker's verification of insurance to demonstrate that the Policies are in place, together with receipts or other evidence of payment of the latest premiums due under the Policies.
- 38.3 If the Supplier does not establish and maintain the Policies, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 38.4 The terms of the Policies or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 38.5 The Supplier shall hold and maintain the Policies during the Contract Period and for a minimum of 6 years following the expiry or earlier termination of the Contract.
- 38.6 The Supplier shall not take any action or fail to take any action or permit anything to occur in relation to the Supplier which would entitle any insurer to refuse to pay any claim under the Policies.

39. Taxation, National Insurance and employment liability

The Contract is a contract for the provision of services and not a contract of employment. The Supplier indemnifies the Customer and keeps the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue and Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

40. Warranties and representations

The Supplier warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including if its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Contract it has not committed a Prohibited Act;
- (d) at the Service Commencement Date, all information, statements and representations contained in its Tender and Supplemental Tender are true, accurate and not misleading and it will advise the Customer of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) it has not done or omitted to do anything which could have a material adverse effect on its assets or financial condition as an going concern or its ability to perform its obligations under the Contract;
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (i) in the 3 years prior to the Service Commencement Date:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established
- (j) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- (k) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

41. Termination on insolvency and change of control

41.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (c) 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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 41.1(a) to 41.1(h) (inclusive); or

- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

41.2 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Customer may terminate the Contract by written notice with immediate effect within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) if no notification has been made, the date that the Customer becomes aware of the Change of Control.

42. Termination on Default

42.1 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and if:

- (a) the Supplier has not remedied the material breach to the satisfaction of the Customer within 20 Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- (b) the material breach is not, in the opinion of the Customer, capable of remedy.

42.2 For the purposes of clause 42.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Customer would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses 12, 15 and 19 to 24 during the Contract Period.

42.3 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if:

- (a) the Supplier repeatedly breaches any of the terms of the Contract 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 of the Contract;
- (b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply; or
- (c) any warranty given by the Supplier in clause 40 is found to be untrue or misleading.

42.4 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer

fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 18.

43. Termination for convenience

The Customer may terminate the Contract or part of the Services at any time by giving 3 Months' written notice to the Supplier.

44. Consequences of termination or expiry

44.1 If the Customer terminates the Contract under clause 42:

- (a) and makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and
- (b) no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

44.2 Except as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract is without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Parties under clauses 16 to 19, 21 to 23, 24, 26, 27, 31, 37 to 39, 44, 46 and 51.

45. Disruption

45.1 The Supplier shall use reasonable endeavours to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other supplier employed by the Customer.

45.2 Each Party shall promptly inform the other Party of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

45.3 If there is industrial action by any Staff, the Supplier shall seek Approval for its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

45.4 If the Supplier's proposals referred to in clause 45.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:

- (a) require the Supplier to provide alternative proposals; or
- (b) undertake the services itself and recover from the Supplier the additional costs incurred in the process.

Subject to clause 45.5, nothing in this clause 46.4 shall release the Supplier from the proper performance of its obligations under the Contract.

45.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

46. Recovery on termination

46.1 On termination of the Contract for any reason, the Supplier shall:

- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 9. Such property shall be returned in good working order, allowing for reasonable wear and tear);
- (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

46.2 If the Supplier fails to comply with clauses 46.1(a) and 46.1(b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

46.3 If the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clauses 46.1(c) and 46.1(d) free of charge.

Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

47. Dispute resolution

- 47.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (a Dispute) then except as expressly provided in the Contract, the Parties shall follow the procedures set out in this clause 48.
- 47.2 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Parties shall attempt in good faith to resolve the Dispute.
- 47.3 If the Parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority who, together with the Supplier, shall attempt in good faith to resolve it.
- 47.4 If the Authority and the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed amongst the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (an ADR notice) to the other Parties, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice.
- 47.5 The Parties shall not commence court proceedings in relation to the Dispute until the measures set out in clauses 48.1 to 48.4 have been exhausted.
- 47.6 The Customer may at any time before court proceedings are commenced serve a notice on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with clauses 48.9 to 48.15.
- 47.7 The Supplier shall inform the Customer if it intends to start court proceedings and shall allow the Customer 21 days following receipt of such notice to serve a reply on the Supplier requiring the Dispute to be referred to arbitration in accordance with clauses 48.9 to 48.14.
- 47.8 The Supplier may request by written notice to the Customer that a Dispute is referred to arbitration in accordance with clauses 48.9 to 48.14 which the Customer may agree at its discretion.
- 47.9 Any arbitration proceedings shall be governed by the Arbitration Act 1996.

- 47.10 Either Party may give a written notice to the other Party stating that the Dispute is referred to arbitration and providing details of the Dispute (an Arbitration Notice).
- 47.11 The London Court of International Arbitration (LCIA) procedural rules in force on the date of the Arbitration Notice shall be applied and shall be incorporated by reference to the Contract.
- 47.12 The identity of the arbitrator shall be agreed by the Parties.
- 47.13 The arbitration proceedings shall take place in London and shall be governed by English law.
- 47.14 The decision of the arbitrator shall be binding on the Parties.

48. Force majeure

Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected Party may have a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for one Month, the Party not affected may terminate the Contract by giving 5 days' written notice to the affected Party.

49. Entire agreement

- 49.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 49.2 Each Party agrees that it shall have no remedies in respect of any statement, promise, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract, provided that nothing in this clause 49 shall operate to exclude any liability for fraud.
- 49.3 If and only to the extent there is any conflict between the Order Form, the clauses and any document referred to in the clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses;
 - (b) the Order Form except Appendices B (Tender) and C (Supplemental Tender) to the Order Form;

- (c) the terms of the Agreement, the Schedules to the Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix B (Tender), and Appendix C to the Order Form (Supplemental Tender);
- (d) any other document referred to in the clauses; and
- (e) Schedule 1, part 2 of the Agreement and Appendix B to the Order Form (Tender), and Appendix C to the Order Form (Supplemental Tender).

49.4 The Contract may be executed in any number of counterparts, each of which when executed constitute a duplicate original, but all the counterparts shall together constitute one contract.

50. Notices

50.1 Except as otherwise expressly provided in the Contract, no 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 sending the communication.

50.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by recorded delivery) or by e-mail. Such letters and emails shall be addressed to the other Party in the manner referred to in clause 50.3. Provided the relevant communication is not returned as undelivered, the notice or communication is deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours in the case of e-mail, or sooner where the other Party acknowledges receipt of such letters or e-mails.

50.3 For the purposes of clause 50.2 the addresses of the Parties are those set out in the Order Form unless amended in writing by either Party by notice in accordance with this clause 51.

51. Governing law and jurisdiction

51.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

51.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Authorised to sign for and on behalf of the Customer

Signature.....

Date.....

Name in capitals.....

Address.....

Authorised to sign for and on behalf of the Supplier

Signature.....

Date.....

Name in capitals.....

Address.....

SCHEDULE 1 Employment and TUPE

1 In this Schedule 1:

Employees: means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or earlier termination of the Contract.

Employment Information: means the information required under paragraph 2.

2 Disclosure of Information

2.1 Not later than 6 Months prior to the end of the Contract Period or such other period as may be specified by the Customer, the Supplier shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Supplier's personnel including the following:

a) the total number of Employees; and, for each of them, their:

- i) current salary;
 - ii) length of service;
 - iii) hours of work;
 - iv) arrangements for overtime;
 - v) probationary period;
 - vi) period of notice for termination of employment;
 - vii) age;
 - viii) gender;
 - ix) immigration status;
 - x) annual leave entitlement;
 - xi) sick leave entitlement;
 - xii) maternity or paternity leave entitlement;
 - xiii) special leave entitlement;
 - xiv) job description;
 - xv) percentage of time spent in providing the Services;
 - xvi) pension arrangements; and
 - xvii) location and any contractual provisions relating to location
- b) factors that may affect Employees' redundancy entitlement;
 - c) outstanding industrial injury or other claims;
 - d) current pay agreement and any agreed settlement yet to come into effect;
 - e) season ticket loans, provision of cars and other contractual or customary benefits, if applicable;
 - f) any disciplinary action taken by the Supplier against any Employees in the previous 2 years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;
 - g) any grievance procedures against the Supplier in the previous 2 years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied; and

- h) any court or tribunal cases, claims, or actions brought against the Supplier in the previous 2 years.
- 2.2 At intervals stipulated by the Customer (which shall not be more frequent than every 30 days) and immediately prior to the end of the Contract Period the Supplier shall provide the Authority with a complete update of all Employee Information.
- 2.3 Each time the Supplier provides the Employee information it shall warrant the completeness and accuracy of the Employee Information and the Customer may assign the benefit of this warranty to any Replacement Supplier.
- 2.4 The Customer may use the Employee Information it receives from the Supplier for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of the Services at the end of the Contract Period. The Supplier shall provide the Replacement Supplier with such assistance as it shall reasonably request.
- 2.5 The Supplier indemnifies and keeps indemnified the Customer, the Crown and any Replacement Supplier against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer, the Crown and any Replacement Supplier may suffer or incur as a result of or in connection with:
- a) any claim or demand by any Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Supplier or any Staff in respect of any Employee on or before the end of the Contract Period;
 - b) the provision of Employee Information;
 - c) any failure by the Supplier or any Staff to comply with their obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Supplier to comply with its duties under Regulation 13 of the TUPE;
 - d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Employee arising from or connected with any failure by the Supplier or any Staff to comply with any legal obligation to such trade union, body or person; and
 - e) any claim by any person who is transferred by the Supplier to the Customer, the Crown and/or a Replacement Supplier whose name is not included in the Employee Information.
- 2.6 If the Supplier becomes aware that Employee Information has become untrue, inaccurate or misleading, it shall notify the Customer immediately and provide the Customer with up to date information
- 2.7 The Supplier warrants to the Customer that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Staff shall not) without Approval (not to be unreasonably withheld or delayed):
- a) amend (or purport or promise to amend) the terms and conditions of employment or engagement of any Staff other than if such amendment has been previously agreed between the Supplier and the Staff in the ordinary course of business and if such amendment is not related to the transfer of the Services;

- b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than if such transfer or removal:
 - i) was planned as part of the individual's career development;
 - ii) takes place in the normal course of business; and
 - iii) will not have any adverse effect on the delivery of the Services

provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;

- d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

SCHEDULE 2 Prison Security

- 1 If Staff are required to have a pass for admission to the Premises the Customer shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.
- 2 Staff who cannot produce a proper pass when required to do so by any Customer personnel or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Premises or required to leave the Premises.
- 3 The Supplier shall promptly return any pass if at any time the Customer requires or if the person to whom the pass was issued ceases to be involved in the performance of the Services.
- 4 The Supplier shall return all passes within 24 hours at the end of the Contract Period.
- 5 Staff on the Premises may be subject to a search at any time. Strip searches shall be conducted only on the specific authority of the Customer under the same rules and conditions applying to the Customer's personnel.
- 6 The Supplier shall comply with the Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008.
- 7 While on the Premises Staff shall comply with all security measures implemented by the Customer.
- 8 All Staff shall complete the Customer's induction training and any other training required by the Customer from time to time at the Customer's expense.
- 9 The Customer shall provide copies of its security procedures to the Supplier on request.
- 10 The Supplier and Staff are prohibited from taking any photographs on the Premises:
 - a) without Approval; or
 - b) if no Customer representative is present.
- 10 No photographs taken by the Supplier or Staff on the Premises shall be published or otherwise circulated without Approval.
- 11 The Customer may search any vehicles or conveyances belonging to Staff or the Supplier at the Premises.
- 12 The Supplier shall co-operate with any investigation relating to security which is carried out by the Authority or the Customer and, if required by either the Customer or the Authority, shall:
 - a) use reasonable endeavours to make available any Staff identified by the Customer for interview by the Customer or by a person nominated by the Customer, for the purposes of the investigation. Staff may be accompanied by and advised or represented by another person whose attendance at the interview is acceptable to the Customer; and
 - b) subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Customer or by a person nominated by the Customer, for the purposes of

the investigation, provided that the provision of the material does not prevent the Supplier from performing the Services. The Customer may retain any such material for use in connection with the investigation and, as far as possible, shall provide the Supplier with a copy of any material retained.

- 13 Nothing in the Contract authorises the Supplier in respect of any provision of the Offender Management Act 2007.
- 14 The Supplier will comply with the provisions of PSI 10/2012 as amended by the Authority from time to time.

SCHEDULE 3 Completed Order Form

ORDER FORM

Framework Agreement Reference: prj_585 - Framework Agreement for the provision of HMPPS Prisoner, Family and Significant other services

FROM

Customer:	HMP Birmingham
Service address:	HMP Birmingham Winson Green Road Birmingham B18 4AS
Invoice address:	Newport SSCL – National Offender Management Service PO Box 741 Newport NP10 8FZ
Authorised Representative:	Ref [REDACTED] under Section 40 of the FOIA: Personal Information Phone: [REDACTED] under Section 40 of the FOIA: Personal Information E-mail: [REDACTED] under Section 40 of the FOIA: Personal Information
Order number:	To be quoted on all correspondence relating to this Order: Con_16702
Order date:	1 st July 2019

TO

Supplier:	HALOW (Birmingham)
For the attention of: E-mail: Telephone number:	[REDACTED] under Section 40 of the FOIA: Personal Information
Address:	St Martin's Youth Centre & Community Centre Gooch Street Birmingham Highgate B5 7HE
1. SERVICES REQUIREMENTS	

(1.1) Services required: As specified in Appendix 1: Specification for the Services
(1.2) Service Commencement Date: 1st July 2019
(1.3) Price payable by Customer and payment profile: Annual Contract Price 1st July 2019 - 1st October 2019: [REDACTED] under Section 43 of the FOIA: Commercial Interests Annual Contract Price 2nd October 2019 - 1st October 2020: [REDACTED] under Section 43 of the FOIA: Commercial Interests Annual Contract Price 2nd October 2020 - 1st October 2021: [REDACTED] under Section 43 of the FOIA: Commercial Interests Total Contract Price (Including 1 year extension): £354,849.55 The Annual contract price will be divided into 12 equal monthly payments. The Contractor will invoice the Authority monthly in arrears. The Contractor will be required to invoice the respective prisons where the services are to be performed and in accordance with the payments profile.
(1.4) Completion date (including any extension period or periods): 1 Year, 3 Month contract completion date – 1st October 2020 Option to extend for 1 Year Period (if applied) completion date – 1st October 2021

2 MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS
(2.1) Supplemental requirements in addition to the Terms and Conditions:
(2.2) Variations to the Terms and Conditions:

3. PERFORMANCE OF THE SERVICES
(3.1) Key personnel of the Supplier to be involved in the Services:

Name: [REDACTED] under Section 40 of the FOIA: Personal Information Email: [REDACTED] under Section 40 of the FOIA: Personal Information Phone: [REDACTED] under Section 40 of the FOIA: Personal Information
(3.2) Performance standards: KPI 1 - Visits Centre open for 100% of contracted sessions. KPI 2 - Visits room play area will be open for 100% of contracted sessions. KPI 3 - Provision of 100% of contracted Family days. KPI 4 - 100% response to all comments/complaints raised requiring a response in relation to the visits centre. KPI 5 - 85% of visitor's experience feedback is positive KPI 6 – Provision of Family Engagement I line with the contract specification.
(3.3) Location(s) at which the Services are to be provided: HMP Birmingham Winson Green Road Birmingham B18 4AS
(3.4) Quality standards: To be agreed and completed during mobilisation
(3.5) Contract monitoring arrangements: To be agreed and completed during mobilisation Contract Managers on site: Name: [REDACTED] under Section 40 of the FOIA: Personal Information Phone: [REDACTED] under Section 40 of the FOIA: Personal Information Email: [REDACTED] under Section 40 of the FOIA: Personal Information
(3.6) Management Information and meetings To be agreed and completed during mobilisation

4. CONFIDENTIAL INFORMATION
(4.1) The following information is Confidential Information: (4.2) Duration that the information is Confidential Information:

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER enters a legally binding contract with the Customer to provide to the Customer the Services specified in this Order Form incorporating the rights and obligations in the Terms and Conditions set out in the Framework Agreement entered into by the Supplier and the Authority on 3rd May 2017.

For and on behalf of the Supplier:

Name and title	[REDACTED] under Section 40 of the FOIA: Personal Information
Signature	[REDACTED] under Section 40 of the FOIA: Personal Information
Date	
Supplier's Authorised Representative for the Contract (if different)	[REDACTED] under Section 40 of the FOIA: Personal Information

For and on behalf of the Customer:

Name and title	[REDACTED] under Section 40 of the FOIA: Personal Information
Signature	[REDACTED] under Section 40 of the FOIA: Personal Information
Date	

Appendix 1: Specification for the Services



Specification.doc

Appendix 2: Supplier's Tender

[REDACTED] under Section 43 of the FOIA: Commercial Interests

Appendix 3: Supplemental Tender

[REDACTED] under Section 43 of the FOIA: Commercial Interests

SCHEDULE 4 Variation Form

Variation Form to call-off terms and conditions for services

[NAME OF LOT]

.....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[NAME OF PRISON] **(the Customer)**

and

[NAME OF SUPPLIER] **(the Supplier)**

1. The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY EFFECT ON THE PRICE].
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Customer

Signature.....

Date.....

Name in capitals.....

Address.....

.

Authorised to sign for and on behalf of the Supplier

Signature.....

Date.....

Name in capitals.....

Address.....

.

SCHEDULE 5 ESF Match Funding

- 1 NOMS is a co-financing organisation in England for the 2015–2020 ESF programme (the “**Programme**”) under which NOMS applies for ESF funding using its own match funding. This is to support ESF funded provision aimed at getting workless individuals into sustainable work. The ESF matches the amounts spent by NOMS with suppliers for goods and services which contribute to retraining offenders.
- 2 NOMS must comply with the requirements of the Programme as set out by the ESF managing authority in England on behalf of the European Union. Its requirements form part of the Contract.
- 3 The Parties agree and acknowledge that the Contract may be used for ESF match funding purposes by NOMS in the Programme.
- 4 If the Authority informs the Supplier that the Services are supported by the ESF, the Supplier shall:
 - i) acknowledge the financial support from the ESF and the European Union;
 - ii) indemnify and keep indemnified the Customer against all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any breach by the Supplier of clause 28;
 - iii) comply and procure that its Sub-Contractors comply, with Articles 8 and 9 of European Commission Regulation number 1828/2006 (ESF Regulation) and refer to the Authority in addition to all references it makes to the ESF;
 - iv) in connection with compliance with Article 9(c) of the ESF Regulation use the statement: “*Investing in jobs and skills*”;
 - v) provide, and procure that its Sub-Contractors shall, provide all information: (i) requested by the Authority to allow it to comply with Article 7.2 (d) of the ESF Regulation: and (ii) as specified by the Authority and in the format required by the Authority, in relation to any activity undertaken by offenders who are eligible to match ESF funding, in each case within 14 days after the date of request from the Authority and in each case to the extent required by the ESF Regulation; and

- vi) consider, and procure that its Sub-Contractors consider the guidance for suppliers for publicity requirements for NOMS/ESF funded services on the Authority's website from time to time.