

**ACAS**  
2nd Floor  
7-8 Wellington Place  
Leeds  
LS1 4AP  
t 0330 109 3275

Attn: [Redacted under FOI Act S.40 Personal Information]  
By email to: [Redacted under FOI Act S.40 Personal Information]

Date: **8th November 2022**

Our ref: **PR 2022 117**

Dear Sirs,

### **Provision of Training by ACAS**

Following the proposal by **ACAS** for the provision of provision of ACAS training services, the Crown Prosecution Service are pleased to award this contract to you.

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

The Short Form Terms and Conditions Contract adheres to the [GCF Supplier Code of Conduct](#).

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

- 1) The charges for the Services shall be as set out in Annex 2 (Charges).
- 2) The specification of the Services to be supplied is as set out in Annex 3 (Specification).
- 3) The Term shall commence **14th November 2022 (Commencement Date)** and the Expiry Date shall be **30th September 2023 (Expiry Date)**. A specific timetable for delivery of the Services shall be agreed between the Customer and the Supplier or, in the absence of agreement, in accordance with a timetable reasonably determined by the Customer.
- 4) The address for notices of the Parties are:

#### **Customer**

For the attention of:  
Learning and Development Category  
Manager  
Commercial Team,  
Zone A, 10<sup>th</sup> Floor,  
The Crown Prosecution Service  
102 Petty France,  
Westminster,  
London  
SW1H 9EA

#### **Supplier**

For the attention of:  
[Redacted under FOI Act S.40]  
2nd Floor  
7-8 Wellington Place  
Leeds  
LS1 4AP

Attention: Commercial Team  
Email: CommercialInbox@cps.gov.uk

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

Name	Title
Redacted under FOI Act S.40 Personal Information	Customer's Representative
Redacted under FOI Act S.40 Personal Information	Customer's Representative
Redacted under FOI Act S.40 Personal Information	Supplier's Representative

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

### Payment

The Customer requires all ordering and payment procedures to be conducted via the current CPS purchase to pay system. The Customer will provide guidance for the registration and use of the current CPS system. The Customer will sponsor the Supplier to use this system and no costs will be incurred by the Supplier.

Following the award of the contract a Purchase Order Number will be issued via the CPS system to the Supplier; this order will be raised to the value of the Charges set Annex 2 (Charges) out into this Agreement. This will be received by the Supplier as an attachment to an email and also directly into the Supplier portal. The Customer prefers Suppliers to submit requests for payment via the CPS system as an e-invoice.

### Liaison

For general liaison your contact will continue to be Redacted under FOI Act S.40 Personal Information, Lead Category Manager, Redacted under FOI Act S.40 Personal Information

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to Redacted under FOI Act S.40 Personal Information at the above address **within seven (7) days** from the date of this letter. Please note that this contract will become binding upon both parties once both parties have signed this Letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours sincerely,

Redacted under FOI Act S.40 Personal Information

Redacted under FOI Act S.40 Personal Information



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

Signed for and on behalf of the Supplier

Name:

Position: Senior Adviser

Date: 14 December 2022

Signature:

Signed for and on behalf of Crown Prosecution

Service Name: Redacted under FOI Act S.40 Personal Information

Position: Lead Commercial Category Manager

Signature: Redacted under FOI Act S.40 Personal Information

Date: 31 January 2023

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

### 1. Interpretation

#### 1.1 In these terms and conditions:

“Affected Party”	as defined in clause 14.1;
“Agreement”	means the contract between (1) the Customer acting as part of the crown and (ii) the Supplier constituted of the entirety of the Award Letter and the Annexes;
Approval” and “Approved”	refer to the written consent of the Customer's Representative;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>(a) Government Department;</li> <li>(b) Non-Departmental Public Body or Assembly Sponsored</li> <li>(c) Public Body (advisory, executive, or tribunal);</li> <li>(d) Non-Ministerial Department; or</li> <li>(e) Executive Agency;</li> </ul>
“Charges”	means the charges for the Services as specified in the Award Letter;
“Compliance Officer”	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Commencement Date”	has the meaning given in the Award Letter;
“Customer”	The Crown Prosecution Service;
“Customer’s Representative”	means the individual authorised to act on behalf of the Customer for the purposes of this Agreement;

“DPA”	means the Data Protection Act 2018;
“Data Controller”, “Data Processor” and “Data Subject”	shall have the same meanings given in the General Data Protection Regulations (UK GDPR) ;
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	all applicable privacy and data protection laws relating to the processing of personal data and the privacy of electronic communications including the EU GDPR, the UK GDPR, the DPA, the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
“Data Protection Officer”	takes the meaning given in the UK GDPR;
“Data Subject Access Request”	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Deliverables”	any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in any documents, products and materials provided by the Supplier to the Customer in relation to the Services;
“EU GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“Force Majeure Event”	means any circumstance not within a either party’s reasonable control including, without limitation: <ul style="list-style-type: none"> <li>a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>b) epidemic or pandemic (not including the Covid-19 pandemic);</li> <li>c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition</li> </ul>

of sanctions, embargo, or breaking off of diplomatic relations;

- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- f) collapse of buildings, fire, explosion or accident;
- g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on clause 14, or companies in the same group as that party);
- h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- i) interruption or failure of utility service.

“FOIA”

means the Freedom of Information Act 2000;

"Government Data"

means a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Confidential Information, and which: i) are supplied to the Supplier by or on behalf of the Customer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Agreement; or b) any Personal Data for which the Customer is the Data Controller;

“Information”

has the meaning given under section 84 of the FOIA;

"Information Commissioner"

the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

Insolvency Event

where:

- (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 the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (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, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) 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 other party's assets and such attachment or process is not discharged within fourteen (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 (a) to (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; or
- (k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;

"Intellectual Property Rights"	means patents, trade marks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom;
"Key Personnel"	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
"Law"	means all applicable laws, statutes, regulations and codes from time to time in force;
"Month"	means calendar month;
Parliament	The UK Parliament;
"Party"	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	takes the meaning given in the UK GDPR;
"Personal Data Breach"	takes the meaning given in the UK GDPR;
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Purchase Order Number"	means the Customer's unique number relating to the supply of the Services;
"Relevant Conviction"	For the purposes of this Agreement a Relevant Conviction is defined as a conviction relating to a current criminal offence (excluding minor motoring offences);
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);

“Services”	means the services to be supplied by the Supplier to the Customer in accordance with this Agreement and as more particularly detailed in the Specification;
“Specification”	means the specification for the Services (including as to quantity, description and quality) set out in Annex 3 (Specification) to this Agreement;
“Staff”	means all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Sub-Processor”	means any third Party appointed to process Personal Data on behalf of the Service Provider related to this Agreement;
“Supplier”	means the person named as Supplier in the Award Letter;
“Supplier’s Representative”	means the individual authorised to act on behalf of the Supplier for the purposes of this Agreement;
“Term”	means the period from the Commencement Date to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of this Agreement;
UK GDPR	means the EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as modified by Annex 5 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as updated from time to time;
"Variation"	means a properly executed variation to this Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Working Days”	Monday to Friday except for any public holiday in England and Wales;
“Working Hours”	the period from 9.00 am to 5.00 pm on any Working Day;

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

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

## **2. Basis of Agreement**

- 2.1 The signed Award Letter returned by the Supplier to the Customer constitutes an offer by the Supplier to supply the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the signed Award Letter shall be deemed to be accepted by the Customer on signature on behalf of the Customer. The Award Letter having been signed by both parties shall become binding upon both parties at the point of that signature.
- 2.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of the Services are and remain true and accurate.

## **3. Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
  - 3.2.6 comply with all applicable Laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;

- 3.2.7 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 3.2.8 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
- 3.2.9 comply with any additional obligations as set out in the Award Letter.
- 3.3 The Customer may by written notice to the Supplier at any time request a Variation to the scope of the Services by submitting a draft in the form set out at Annex 5. The Variation when signed by both parties shall form part of this Agreement. In the event that the Supplier agrees to any Variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.
- 3.4 Time shall be of the essence for delivery of the Services.
- 3.5 The Supplier shall at its own risk and expense provide all equipment, tools, vehicles and other items required to deliver the Services. Any equipment, tools, vehicles and other items provided by the Customer to the Supplier for supplying the Services remain the property of the Customer and shall be returned to the Customer on expiry or termination of the Agreement.
- 4. Term**
- 4.1 The Agreement shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to two (2) further periods of six (6) Months by giving not less than ten (10) Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.
- 5. Charges, Payment and Recovery of Sums Due**
- 5.1 The Charges for the Services shall be as set out in Annex 2 (Charges) and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than thirty (30) days after receipt of a valid invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 18.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.
- 5.8 The Customer is entitled to withhold payment for partially or undelivered Services. Doing so does not stop it from using its other rights under Agreement.
- 6. Premises and equipment**
- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier), the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.

- 6.6 Without prejudice to clause 3.5, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal wear and tear) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days.

## **7. Staff and Key Personnel**

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

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

- 8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional

terms and conditions relating to such assignment, sub-contract, novation or disposal, including the insertion of additional terms and conditions into any sub-contract. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

- 8.2 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 8.3 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract to the Customer as soon as is reasonably practicable following entry into the relevant sub-contract.
- 8.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.
- 8.5 When the Customer uses its rights under clause 8.4 the Supplier must enter into a novation agreement in the form that the Customer specifies.

## **9. Intellectual Property Rights**

- 9.1 All Intellectual Property Rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 In the absence of prior written agreement by the Customer to the contrary, all Intellectual Property Rights created by the Supplier or the Staff:
  - 9.2.1 In the course of performing the services; or
  - 9.2.2 exclusively for the purpose of performing the servicesshall vest in the Customer on creation.
- 9.3 Neither Party has the right to use the other Party's Intellectual Property Rights, including any use of the other Party's names, logos or trademarks, except as provided in this clause 9 or otherwise agreed in writing.

## **10. Governance, Records and Audit**

- 10.1 The Supplier shall:
- 10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - 10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2 The Supplier shall keep and maintain for seven (7) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.
- 10.1 The Supplier shall allow the Customer (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the Customer under this Agreement are accurate and to check compliance with Clause 13 and Annex 5 (Data Protection).
- 10.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the Customer (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 10.3 The Customer shall provide at least five (5) Working Days' notice of its intention to conduct an audit and any audit shall be conducted during Working Hours.
- 10.4 The Customer and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge

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

- 11.1 Subject to clause 11.2, each Party shall:
- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party;
  - 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement; and
  - 11.1.3 immediately notify the disclosing Party if it suspects unauthorised access or copying of Confidential Information.
- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party in certain circumstances:
- 11.2.1 where disclosure is required by Law or by a court of competent jurisdiction;
  - 11.2.2 where requested by Parliament;
  - 11.2.3 to its auditors or for the purposes of regulatory requirements;

- 11.2.4 on a confidential basis, to its professional advisers;
- 11.2.5 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.6 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.6 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 11.2.7 where the receiving Party is the Customer:
- (a) on a confidential basis to the employees, agents, consultants and Suppliers of the Customer;
  - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
  - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
  - (d) in accordance with clause 12.

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

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

## **12. Freedom of Information**

- 12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

- 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
  - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
- 13. Protection of Personal Data**
- 13.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor. Part 1 to Annex 5 (Data Protection) sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing, the types of Personal Data and categories of Data Subject.
- 13.3 Without prejudice to the generality of Clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices (or other grounds as applicable) in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.
- 13.4 Without prejudice to the generality of Clause 13.1 the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- 13.4.1 process that Personal Data only in accordance with the written instructions of the Customer (such instructions to include the terms of this Agreement, and in particular Part 1 to Annex 5 (Data Protection), unless the Supplier is required to process Personal Data to comply with obligation in Law (in which case the Supplier shall, unless prohibited by Law, notify the Customer of such processing prior to commencing the processing));

- 13.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental or unlawful loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 13.4.3 ensure that all personnel who have access to and/or process Personal Data:
- (a) do not process that data except on the written instructions of the Customer (such instructions to include the terms of this Agreement, and in particular Part 1 to Annex 5 Data Protection);
  - (b) take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that the Supplier Staff:
    - (i) are aware of and comply with the Supplier's duties under this Clause;
    - (ii) are subject to appropriate confidentiality undertakings with the Supplier or the relevant sub- contractor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 13.4.4 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- 13.4.5 assist and co-operate with the Customer in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, in accordance with Article 28 (3) (e) and (f) of the UK GDPR;
- 13.4.6 notify the Customer without undue delay, and in any event within 48 hours, on becoming aware of a Personal Data Breach in accordance with Paragraph 2, Part 2 to Annex 5 (Data Protection);
- 13.4.7 assist the Customer, in accordance with Part 3 to Annex 5 (Data Protection), in meeting its obligations under the Data Protection Legislation to notify any Data Subject of any Personal Data Breach or other breach of this Agreement, where the Customer determines, at its discretion, that the event or breach is likely to result in a high risk to the rights and freedoms of the Data Subject;
- 13.4.8 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Law to store the Personal Data. In carrying out its obligations under this clause, the Supplier shall be permitted to retain copies of the Personal Data:
- (a) where required by Law to store the Personal Data;
  - (b) where such Personal Data is maintained on tapes, discs, servers or other storage devices provided that in each case it is put beyond use.
- 13.4.9 assist and co-operate with the Customer in responding to any request to the Customer from a Data Subject (including Data Subject Access Requests, requests to exercise the right to erasure, rectification, object, withdrawal of consent, or any other request to exercise rights of the Data Subject under the Data Protection Legislation) in accordance with Part 3 to Annex 5 (Data Protection).
- 13.5 Without prejudice to the generality of Clause 13.1
- 13.5.1 the Supplier shall maintain complete and accurate records and information to demonstrate its compliance with Article 28 of the UK GDPR and this Clause 13. Those records shall contain all of the information required in Article 30 (2) of the UK GDPR namely:
- (a) the name and contact details of the Processor or Processors and of each controller on behalf of which the Processor is acting and where applicable of the controllers or the Processors representatives, and the Data Protection Officer;
  - (b) the categories of Processing carried out on behalf of the controller;
  - (c) where applicable transfers of Personal Data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, the documentation of suitable safeguards; and
  - (d) a general description of the applicable technical and organisational security measures.

- 13.5.2 Where the Supplier does not already employ or otherwise benefit from the services of a Data Protection Officer, and the Data Protection Legislation requires that it must do so prior to processing any Personal Data under this Agreement, the Supplier shall appoint and maintain in post a Data Protection Officer in accordance with the Data Protection Legislation and shall notify the Customer of that person's contact details.
- 13.6 The Supplier shall not appoint any third party to process Personal Data within the scope of this Agreement without the prior written consent of the Customer, such consent to be applied for and granted or refused in accordance with Clause 8 of this Agreement.
- 13.7 Prior to entering into this Agreement, the Supplier shall notify the Customer in writing of any third parties which already process Data on its behalf and may process Personal Data under this Agreement ("Third Party Processors"). The Supplier confirms that any Third Party Processors have entered into a written agreement with it (or shall do so prior to processing any Personal Data under this Agreement) incorporating terms which are substantially similar to those set out in this clause 13, with the effect that the obligations set out in this Agreement and required by the Data Protection Legislation, shall apply to any such Third Party Processor.
- 13.8 The Supplier shall notify the Customer as soon as reasonably practicable of any intention to appoint or replace any Third Party Processor, and the Customer shall be entitled to object to such appointment or replacement, in accordance with Clause 13.6.
- 13.9 As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause.
- 13.10 Subject to the prior written agreement of the Customer, the Supplier may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to Annex 5 (Data Protection)).
- 13.11 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 13.12 The Supplier must put in place appropriate protective measures to protect against a Data Loss Event which must be Approved by the Customer (such Approval shall not relieve the Supplier of its obligations under Clause 13.4.2).
- 13.13 If lawful to notify the Customer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 13.14 The Supplier must promptly provide the Customer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 12. This includes giving the Customer:
- 13.14.1 full details and copies of the complaint, communication or request;
  - 13.14.2 assistance that it requests following any Data Loss Event; and
  - 13.14.3 assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.

- 13.15 The Supplier must maintain full, accurate records and information to show it complies with this clause 13. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Customer determines that the processing:
- 13.15.1 is not occasional;
  - 13.15.2 includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR;
  - 13.15.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.16 Ensure it complies with guidance issued by the Information Commissioner's Office.
- 13.17 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
- 13.18 The Supplier:
- 13.18.1 must provide the Customer with all Government Data in an agreed open format within ten (10) Working Days of a written request;
  - 13.18.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - 13.18.3 must securely destroy all storage media that has held Government Data at the end of life of that media using good industry practice; and
  - 13.18.4 securely erase all Government Data and any copies it holds when asked to do so by the Customer unless required by Law to retain it.
- 14. Force Majeure**
- 14.1 Provided it has complied with clause 14.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 14.3 The Affected Party shall:
- 14.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - 14.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than two (2) months the party not affected by the Force Majeure Event may terminate this Agreement by giving written notice to the Affected Party.

## 15. Liability

15.1 Neither Party excludes or limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) bribery or fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be excluded or limited by Law;

and the Supplier does not exclude or limit its liability for:

- (e) any claim made against the Customer arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or Supplier Staff;
- (f) the enforcement of this Agreement;
- (g) infringement or alleged infringement or any third-party Intellectual Property Rights caused by the use or supply of the Services;
- (h) wrongful termination of this Agreement; or
- (i) any fine, penalty or related damages which have been caused by a breach of the Agreement by the Supplier and which breach causes the Customer to be in breach of Law (excluding fines, penalties or related damages incurred by one Party for any breach of Data Protection Legislation, Clause 13 or Annex 5 (Data Protection) to the extent such breach is caused by the other Party).

15.2 Subject always to clauses 15.1, 15.4, 15.5 and 15.7

15.2.1 the aggregate liability of each Party in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier;

- 15.2.2 except in the case of claims arising under clauses 29.1.2 and 29.1.3 in no event shall the Supplier be liable to the Customer, and in no event shall the Customer be liable to the Supplier for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect, special or consequential loss or damage.
- 15.2.3 Neither Party shall be liable to the other Party for ex-gratia compensation payments in relation to liability for breach of the Data Protection Legislation, Clause 13 (Data Protection) and/or Annex 5 (Data Protection), as applicable.
- 15.3 Subject to Clause 15.2.1 and notwithstanding Clauses 15.2.2 and 15.2.3, the Parties acknowledge that a Party may, amongst other things, recover from the other Party the following Losses incurred by: (i) the Customer to the extent that they arise as a result of a breach of this agreement or the performance or non-performance or negligent performance of this Agreement by the Supplier; and (ii) the Supplier to the extent that they arise as a result of a breach by the Customer of the Data Protection Legislation, Clause 13 and/or Annex 5 (Data Protection), as applicable:
- (a) subject to Clause 15.2.1 any additional operational and/or administrative costs and expenses incurred by such Party, including costs relating to time spent by or on behalf of such Party in dealing with the consequences of the such default or breach, as applicable;
  - (b) subject to Clause 15.2.1 any wasted expenditure or charges rendered unnecessary and/or incurred by such Party arising from such Default or breach, as applicable;
  - (c) subject to Clause 15.2.1 the additional cost of the Customer of procuring Replacement Services for the remainder of the Term of the Agreement and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement; and
  - (d) subject to Clause 15.2.1, any financial amounts awarded by a court (and related interest) and compensation or interest paid to a third party by a Party.
- 15.4 in respect of all fines and, penalties which are incurred by one Party for any breach of the Data Protection Legislation to the extent that the breach of the Data Protection Legislation is caused by a breach by the other Party of the Agreement, then the total aggregate liability shall be:
- (a) for the Supplier (where the Supplier causes the relevant breach), £17.5 million or 4% of the total annual worldwide turnover in the preceding financial year, whichever is higher; and

- (b) for the Customer (where the Customer causes the relevant breach), three million pounds (£3 Million GBP).

Subject to Clause 15.6 below, the liability under this Clause 15.4 is a separate liability from and does not count towards liability under Clause 15.2.1 above and 15.5 below.

- 15.5 subject to Clause 15.1 and 15.4 above, the total aggregate liability (including damages awarded to third parties and related interest) of one Party to the other Party for one or more of the other Party's breach of the Data Protection Legislation, Clause 13 (Data Protection) and/or Annex 5 (Data Protection), as applicable, is three million pounds (£3 Million GBP). Subject to Clause 15.6 below, for the avoidance of doubt, the liability under this Clause 15.5 is a separate liability from and does not count towards liability under Clauses 15.4(a), 15.4(b) and 15.2.1 above and;
- 15.6 a Party shall not be permitted to claim under the limit of liability in Clause 15.4 and/or Clause 15.5 and make an additional claim(s) under any other separate limit of liability in the Agreement for any breach of the Agreement by the other Party arising out of the same or a similar event or series of events. For the avoidance of doubt, nothing in this Clause is intended to prevent a Party claiming under both Clauses 15.4 and 15.5.
- 15.7 The Supplier's liability under the indemnity in clause 29.1.2 and 29.1.3 shall be unlimited.

## 16. Insurance

- 16.1 The Supplier, unless protected by Crown Immunity, shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- 16.1.1 public liability insurance with a limit of indemnity of not less than five million pounds (£5 Million GBP) in relation to any one claim or series of claims;
- 16.1.2 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5 Million GBP) OR in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- 16.1.3 professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5 Million GBP) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 16.2 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required

Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 16.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 16.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the contract.
- 16.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the contract.

## **17 Warranties and Representations**

17.1 The Supplier warrants and represents that:

- (a) it is a legally valid and existing organisation incorporated in the place it was formed;
- (b) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Agreement;
- (c) it maintains all necessary rights, authorisations, licenses and consents to perform its obligations under the Agreement;
- (d) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Agreement; and
- (e) it is not impacted by any Insolvency Event.

17.2 The warranties and representations in clause 17.3 in this Agreement are repeated each time the Supplier provides Deliverables under the Agreement.

17.3 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Customer.

## **18. Termination**

18.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least one (1) Month (or, if the Agreement is less than three (3) Months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.

18.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

- 18.2.1 (without prejudice to clause 18.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
- 18.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

- 18.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- 18.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
- 18.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 22; or
- 18.2.6 suffers an Insolvency Event.
- 18.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 18.2.4 or any potential such change of control.
- 18.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed invoiced amounts worth over 35% of the total Contract value or £5,000, whichever is the lower within ninety (90) days of them falling due.
- 18.5 If a Supplier terminates the Agreement under clause 18 :
- (a) the Customer shall promptly pay all outstanding Charges incurred to the Supplier; and
  - (b) the Customer shall pay the Supplier a reasonable amount in respect of any work in progress at the time of termination, as shall be agreed between the Parties, as long as the Supplier provides a fully itemised and costed schedule with evidence. The maximum value of this payment is limited to the total sum payable to the Supplier if the Agreement had not been terminated;
- 18.6 If the Customer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Agreement then the Customer may:
- (a) require that the Supplier provide to the Customer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Agreement and the Supplier will make changes to such plan as reasonably required by the Customer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Customer on demand.
  - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Customer or fails to implement or provide updates on progress with the plan, terminate this Agreement immediately for material breach (or on such date as the Customer notifies).
- 18.7 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 15, 19.4, 20, 21.3 22.4, and 22.7 or any other provision of the Agreement that either expressly or by implication has effect after termination. this clause and clauses provision
- 18.8 Upon termination or expiry of the Agreement, the Supplier shall:

- 18.8.1 give all reasonable assistance as may be requested by the Customer to the Customer and any incoming supplier of the Services to ensure the smooth handover of the Services to any incoming supplier; and
- 18.8.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **19. Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party within twenty eight (28) days of a written request from the other Party.
- 19.2 If the dispute cannot be resolved by the Parties within one (1) Month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the dispute under clause 28 which shall apply at all times.
- 19.4 The Supplier cannot suspend the performance of the Agreement during any dispute.

## **20. Prevention of Fraud and Corruption**

- 20.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 20.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 20.3 If the Supplier or the Staff engages in conduct prohibited by clause 20.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
  - 20.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 20.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **21. Compliance**

- 21.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The

Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

- 21.2 The Supplier shall:
- 21.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 21.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 21.3 The Supplier shall:
- 21.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
  - 21.3.2 take all reasonable steps to secure the observance of clause 21.3.1 by all Staff.
- 21.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time. The supplier must ensure that Supplier Staff are aware of the Customers Environmental Policy.
- 21.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
- 21.5.1 the Official Secrets Acts 1911 to 1989; and
  - 21.5.2 section 182 of the Finance Act 1989.

## **22. General**

- 22.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 22.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 22.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 22.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 22.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly

stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

- 22.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any Customer to make any commitments on the other Party's behalf.
- 22.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common Law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 22.8 If any provision of the Agreement is prohibited by Law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

### **23. Notices**

- 23.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 23.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 23.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 23.3 Notices under clauses 14 (Force Majeure) and 18 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery to the postal address of the relevant Party set out in the Award Letter.

### **24. Conflict of interest**

- 24.1 The Supplier must take action to ensure that neither the Supplier nor the Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Staff and the duties owed to the Customer under the Agreement, in the reasonable opinion of the Customer.
- 24.2 The Supplier must promptly notify and provide details to the Customer if a conflict of interest happens or is expected to happen.
- 24.3 The Customer can terminate the Agreement immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

### **25. Reporting a breach of the Law**

- 25.1 As soon as it is aware of it the Supplier and Staff must report to the Customer any actual or suspected breach of Law.

25.2 The Supplier shall not retaliate against any of the Staff who in good faith reports a breach.

## 26. Equality, diversity and human rights

26.1 The Supplier comply with their obligations under the Equality Act 2010 (“Equality Act”) and any other applicable equality and diversity Laws, when they perform their obligations under this Agreement, including but not limited to:

26.1.1 protections against discrimination on the grounds of age, marriage and civil partnership, race, sex, sexual orientation, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;

26.1.2 any other requirements and instructions which the Customer reasonably imposes related to equality Law.

26.2 The Supplier shall, upon request by the Customer, inform the Customer of the steps taken, and provide evidence of the steps taken, to comply with its obligations under this clause 26 when undertaking the Services relating to this Agreement.

## 27. Legality

27.1.1 The Supplier must, in connection with provision of the Services, use reasonable endeavours to: comply and procure that its sub-contractors comply with the Supplier Code of Conduct published at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other policies as the Customer may notify to the Supplier from time to time;

27.1.2 support the Customer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;

27.1.3 not use nor allow its sub-contractors to use modern slavery, child labour or inhumane treatment;

27.1.4 meet the applicable Government Buying Standards applicable to the Services which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

## 28. Governing Law and Jurisdiction

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

## 29. Indemnity

29.1 The Supplier shall indemnify and keep indemnified the Customer in full, against all direct, indirect or consequential liabilities, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Customer as a result of or in connection with:

29.1.1 the Supplier’s breach or negligent performance or non-performance of this Agreement;

- 29.1.2 any claim made against the Customer arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or Supplier Staff;
  - 29.1.3 the enforcement of this Agreement;
  - 29.1.4 the wilful misconduct of the Supplier or the Staff;
  - 29.1.5 the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Agreement. Any amounts due under this Clause 29.1.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer;
  - 29.1.6 the Supplier's failure to ensure that all of the Staff engaged by the Supplier for the performance of the Services are paid subject to all relevant and necessary deductions including but not limited to deductions for income tax and National Insurance contributions, where required by Law.
- 29.2 The indemnity under clause 29.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Customer are directly caused (or directly arise) from the negligence or breach of this Agreement by the Customer or its representatives.
- 29.3 The provisions of this clause 29 shall survive termination of the Contract howsoever arising.

### Annex 2: – Charges

Course Title	Price
Key Point	Redacted under FOIA
Getting it Right (half day)	Redacted under FOIA
Getting it Right (full day)	Redacted under FOIA
Getting it Right (6hrs) - split over 2 consecutive days (digital only)	Redacted under FOIA
In- depth (half day)	Redacted under FOIA
In-depth (full day)	Redacted under FOIA
In-depth (6hrs) - split over 2 consecutive days (digital only)	Redacted under FOIA
Workplace Training (half day)	Redacted under FOIA Act 5.43 Com
Workplace Training (full day)	Redacted under FOIA Act 5.43 Com
Workplace Project (half day)	Redacted under FOIA Act 5.43 Com
Workplace Project (full day)	Redacted under FOIA Act 5.43 Com
Charged Talk	Redacted under FOIA Act 5.43 Com (where appropriate)
Collaborative Events	Redacted under FOIA Act 5.43 Commercial Interests (where appropriate) Redacted under FOIA Act 5.43 Commercial Interests (where appropriate)
Hourly Rate	Redacted under FOIA Act 5.43 Com

Prices for all bespoke courses will be agreed on a case-by-case basis in order with the day rates detailed above.

## Annex 3: Specification

### 1. **BACKGROUND TO THE REQUIREMENT**

- 1.1 The Customer has a requirement for ad-hoc training including, but not limited to, workplace training from the ACAS Catalogue as well as the development and delivery of bespoke workplace training.

### 2. **THE SERVICES**

2.1 The Supplier shall deliver the following training:

- Ad-hoc training as detailed on the ACAS Catalogue
- Ad-hoc delivery of other workplace training to CPS staff. Content, locations and attendees to be agreed by the Customer and Supplier in advance. The training shall include, but not be limited to the following courses:
  - Essential Line Manager Skills
  - Tackling Unacceptable Behaviours
  - Having Difficult Conversations
  - Investigator Training
- Design of all training material, including provision of papers and documents required for the training;
- Provision of detailed written training material to the standard required for the accreditation of Continuing Professional Development (CPD) points; and
- Evaluation of development sessions and summary feedback to the Customer. The feedback form will be issued by the Customer to the Supplier before each training session.

2.2 Deliverables

- Provision of full training material, which may include role play scenarios or other written briefing material as agreed between the Supplier and Customer;
- The content of the training material shall be emailed to the Customer's Lead in the required timescale;
- Provision of evaluation forms for all training delivered; and
- Written summary of evaluation and recommendations for future training and

development activity.

### 2.3 Location

The Customer requires the supplier to attend the development sessions at various Customer premises throughout England and Wales as well as digitally (to be confirmed via email in advance of the sessions). Although the majority of sessions are likely to be delivered in the Customer's London or York premises (shown below).

<p>Crown Prosecution Service 102 Petty France London SW1H 9EA</p>	<p>Crown Prosecution Service Foss House 1-2 Peasholme Green York YO1 7PX</p>
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### 2.4 Security Clearance

This shall not be required for external training consultants.

## 3. GOVERNANCE / CONTRACT MANAGEMENT

- 3.1 The Supplier shall be managed the Customer's Project Officer who shall be responsible for the day to day management of the contract. The Supplier shall appoint a Project Manager who shall act as the principal point of contact for the Supplier. Telephone meetings will be held to review progress and delivery of the service and discuss any issues.
- 3.2 Once a year a meeting shall take place to review progress, outcomes and delivery of the service. The meeting shall consist of the Customer Lead, the Customer Commercial team and representatives from the Supplier.
- 3.3 The Supplier shall be responsible for organising and providing the secretarial and administrative support for review meetings. The Supplier's Project Officer will assist with booking meeting rooms at our offices, but the Supplier shall be expected to provide full secretariat and presentations.
- 3.4 The Supplier shall be responsible for any travel and subsistence costs incurred as a result of attendance at any training event.

**Annex 5: - Variation Form**

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

Variation No.: X

BETWEEN:

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

1. This Agreement is varied as follows:

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

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

4. This variation shall take effect on [DATE]

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

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

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

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

Annex 5 - Data Protection

**Part 1 - Processing, Personal Data and Data Subjects**

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Annex.

<b>Contract for Services</b>	PR 2022 177 Provision of ACAS Training Courses
<b>Issued to</b>	<b>ACAS</b>
<b>Data Processing descriptor</b>	<b>Narrative</b>
Subject matter of the processing	The Services provided by the Supplier under this Agreement shall enable the Supplier to generate, process, store or transmit Personal Data for the purpose of delivering the Customer's prosecutorial functions and other business functions determined by statute.
Duration of the processing	Approved as the period: (i) in relation to the relevant Customer Data, from the Operational Service Commencement Date of the Agreement to the expiry or termination (all or part, as applicable) of the Contract, and until (ii) the fulfilment of Exit Assistance to Replacement Suppliers.
Nature and purposes of the processing	The nature shall include but not be limited to the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).  The purposes shall be the support and management of: <ul style="list-style-type: none"> <li>• the Customer's staff and Departmental administration;</li> <li>• Data Subject Requests and complaints; and</li> <li>• the Customer's accounts and records.</li> </ul>
Type of Personal Data	Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media that may contain but not be limited to: <ul style="list-style-type: none"> <li>• Personal contact details</li> <li>• Family, lifestyle and social circumstances</li> <li>• Employment and education details</li> <li>• Physical or mental health details</li> <li>• Racial or ethnic origin</li> </ul>
Categories of Data Subjects	<ul style="list-style-type: none"> <li>• Advisers, Consultants and other professional Experts</li> <li>• Customer employees</li> <li>• Civil Servants</li> </ul>
Plan for return and destruction of the	Data relating to (i) case progression and (ii) staff support may be retained during processing and must be returned to the department

<p>data once the processing is complete</p> <p>UNLESS requirement under union or member state Law to preserve that type of data</p>	<p>within three (3) Months of the completion of the processing (or earlier as determined by the relevant Customer case officer), with all copies destroyed within thirty (30) days of the Data being returned to the Customer; and</p> <p>Data relating to (iii) other purposes may be retained during processing and must be returned to the department as determined by the Customer's Representative in the commission given to the Supplier. As a minimum, all copies destroyed within thirty (30) days of the Data being returned to the Customer.</p>
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## Part 2 - Assistance with Data Protection Impact Assessment

1. Where the Customer determines that the processing, taking into account its nature, scope, context and purposes, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of Personal Data (the Data Protection Impact Assessment).
2. Taking account of the information reasonably available to it, the Supplier shall provide reasonable assistance to the Customer in the preparation of the Data Protection Impact Assessment prior to commencing the processing. Such assistance may, at the discretion of the Customer, include:
  - 2.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 2.2 an assessment of the necessity and proportionality on the processing operations in relation to the Services;
  - 2.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
3. The Customer shall notify the Information Commissioner's office in the event that the Data Protection Impact Assessment indicates that the processing to be carried out under this Agreement would result in a high risk to Data Subjects in the absence of measures taken by the Customer to mitigate the risk.

## Part 3 - Data Subject Access Request, Rights to Erasure and Rights to Rectification and Personal Data Breach

For the purposes of this Annex 3 of this Agreement, the requirements for the Supplier to 'notify the Customer' will be met where the Supplier submits information to both the Customer's normal contract manager and the Customer's Data Protection Officer.

1. The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

2. The Supplier shall notify (including providing full details and copies of the relevant complaint, communication or request, as applicable) the Customer without undue delay, and in any event within 48 hours if it:
  - 2.1 receives from a Data Subject (or third party on their behalf) in respect of their Personal Data:
    - (a) a Data Subject Access Request (or purported Data Subject Access Request);
    - (b) a request to rectify, block or erase any Personal Data; or
    - (c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation.
  - 2.2 receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 2.3 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
  - 2.4 becomes aware of a Personal Data Breach.
3. Taking into account the nature of the processing and the Personal Data, the Supplier shall provide the Customer with assistance by appropriate technical and organisational measures (insofar as this is possible) in relation to the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subject's rights.
4. In the event of a request under Paragraph 2.1 above, the Supplier shall provide the Customer with:
  - 4.1 where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request or other data subject rights request within the relevant timescales set out in the Data Protection Legislation; and
  - 4.2 at its request, any Personal Data it holds in relation to a Data Subject.