

# YPO 1141

## SCHEDULE 7

### CALL-OFF TERMS AND CONDITIONS

(FOR USE BETWEEN THE CUSTOMER AND THE MSP)

THE CUSTOMER HAS THE OPTION TO USE EITHER:-

- THE CALL-OFF TERMS AND CONDITIONS OUTLINED BELOW;
- THE JCT or NEC SUITE OF CONTRACTS;
- ONE OR MORE OF THE ABOVE WHERE THERE IS JUSTIFICATION TO DO SO

THE FORM OF CONTRACT TO BE USED WHEN CALLING OFF THIS FRAMEWORK AGREEMENT SHALL BE MADE KNOWN TO THE MSP AT CALL-OFF STAGE.



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## 1. INTERPRETATION

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

<b>"Approval" and "Approved"</b>	means the written consent of the Customer not to be unreasonably withheld or delayed
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the National Audit Office or the Customer as the context requires or such other auditor as may have been appointed in relation to the Customer
<b>"Base Location"</b>	means the location, specified by the Customer (in the Order Form) at which the majority of the Services shall be delivered
<b>"Change of Law"</b>	means any change to or introduction of any Law coming into force or having effect after the Commencement Date (and which could not have reasonably been anticipated by the MSP prior to the Commencement Date) which:  <ul style="list-style-type: none"><li>(i) relates specifically to the business or operations of the Customer; or</li><li>(ii) relates specifically to the provision of the Services</li></ul> and which in either case, would require the MSP to incur demonstrable and material additional costs or expenses to enable it to continue providing the Services in accordance with this Contract
<b>"Commencement Date"</b>	means the date set out in the Order Form
<b>"Commercially Sensitive Information"</b>	means the Confidential Information listed in the Order Form comprised of information which is provided by the MSP and designated as commercially sensitive information by the Customer for the period set out in that Order Form
<b>"Confidential Information"</b>	means: -  <ul style="list-style-type: none"><li>(a) 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 information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party; and</li><li>(b) the Commercially Sensitive Information,</li></ul>

and does not include any information: -

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 29);
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

**“Consultant/Professional”** means an individual or company who has been selected by the Customer for a specific piece of work or outcomes-based project over a set period of time

**“Consultancy”** means the delivery of a service through a Project/Statement of Work

**“Consultancy Organisation”** means a company who has been retained by the MSP for a Project/Statement of Work over a set period

**"Contract"** means the written agreement between the Customer and the MSP consisting of the Order Form and these clauses save that for the purposes of clause interpretation only, reference to Contract shall not include the Order Form

**"Contract Period"** means the period from the Commencement Date to:  
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- (a) the date of expiry set out in Clause 2 ; or
- (b) following an extension pursuant to Clause 3, 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

**"Contracting Authority"** means YPO and any Contracting Authority for the purposes of the Public Contracts Regulations 2015

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular Authorities, persons,

	commissions or agencies from time to time carrying out functions on its behalf
<b>“Customer”</b>	means the Contracting Authority identified in the Order Form
<b>“Data Controller”</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the MSP under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data breach
<b>“Data Processor”</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>“Data Protection Legislation” or “DPA”</b>	means, the UK General Data Protection Regulation, the Data Protection Act 2018 as amended from time to time and all applicable Laws and regulations relating to Processing of Personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such Law
<b>“Data Subject”</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>“Data Subject Access Request”</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
<b>“Day Rate”</b>	means the fee to the Consultant/Professional for the work they undertake for each Project/Statement of Work
<b>"Default"</b>	means 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
<b>"Deliverables"</b>	means those deliverables listed in the Order Form
<b>"EIR"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
<b>"Equipment"</b>	means the MSP's equipment, plant, materials and such other items supplied and used by the MSP in the performance of its obligations under the Contract
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from

time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**"Force Majeure"**

means any event or occurrence which 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 MSP's or any Consultant's/Professional's organisation;
- (b) the failure by any Consultant/Professional to perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);
- (c) any law or 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

**"Framework Agreement"**

means the framework agreement for the provision of Services between YPO and the MSP

**"Fraud"**

means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud YPO, a Contracting Authority or the Customer

**"Good Industry Practice"**

means 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 supplier engaged in a similar type of undertaking under the same or similar circumstances

**"Improvement Notice"**

means a notice issued on the MSP to improve Minor Defaults of the Framework Agreement, the Contract or the Order Form instructing the MSP to improve or remedy any Minor Defaults in the provision of the Services

**"Information"**

has the meaning given under section 84 of the FOIA or the meaning given to environmental information under regulation 2 of the EIRs, as the context requires

<b>"Intellectual Property Rights" and "IPR"</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>"Law"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Authority of which the MSP is bound to comply
<b>"Material Default"</b>	means any breach of Clauses 10 (Conflict of Interest), 22 (Prevention of Bribery and Corruption), 26 (Health and Safety), 27 (Data Protection), 28 (Freedom of Information Act and Environmental Information Regulations), <b>Error! Reference source not found.</b> (Official Secrets Act), 33 (Records and Audit Access), 34 (Transfer and Sub-Contracting), 44 (Warranties and Representations)
<b>"Milestones"</b>	means the different stages within a Project/Statement of Work. These will be agreed between the MSP and the Customer
<b>"Minor Breach"</b>	means any breach of the Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default
<b>"Month"</b>	means calendar month
<b>"MSP"</b>	means the person, firm, company or organisation who executes this Contract and includes any employee, agent, servant, or representative of the MSP or person employed by or on behalf of the MSP to provide the Services
<b>"MSP Contract Manager"</b>	means the person appointed by the MSP to manage the Contract
<b>"MSP Delivery Team"</b>	means any individual identified in the Order Form as being part of the MSP's delivery team
<b>"MSP Fee"</b>	means the fee due to the MSP for their Services and is a percentage of the overall Project/Statement of Work cost. The MSP Fee must be inclusive of all costs associated with providing the Services and the Retrospective Payment
<b>"Order"</b>	means the order submitted by the Customer to the MSP in accordance with the Framework Agreement
<b>"Order Form"</b>	means the order submitted to the MSP by the Customer in accordance with the Framework Agreement which sets out the description of the

Services to be supplied including, where appropriate, the MSP Delivery Team, the Premises, the timeframe, the Deliverables and the Quality Standards

**"Parent Company"**

means any company which is the ultimate Holding Company of the MSP or any other company of which the ultimate Holding Company of the MSP is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the MSP or which is engaged by the same or similar business to the MSP. The term **"Holding Company"** shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

**"Party"**

means the MSP or the Customer

**"Personal Data"**

has the meaning given to it in the Data Protection Legislation as amended from time to time

**"Pre-Existing IPR"**

means any Intellectual Property Rights vested in or licensed to the Customer or the MSP prior to or independent of the performance by the Customer or the MSP of their obligations under the Contract and in respect of the Customer includes guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs

**"Processing"**

has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and **"Process"** and **"Processed"** shall be interpreted accordingly

**"Prohibited Act"**

means any of the following acts, as described in the Bribery Act 2010:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or another Contracting 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;
- (b) 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 this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;

(ii) under Law creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Contract; or

defrauding, attempting to defraud or conspiring to defraud the Customer or any other Contracting Authority

**"Project Specific IPR"**

means: -

(a) IPR in Services and/or Deliverables provided by the MSP, (or by a third party on behalf of the MSP) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items;

(b) IPR arising as a result of the provision of the Services and/or Deliverables by the MSP under the Contract;

(c) IPR arising as a result of the Project/Statement of Work delivered by the Consultant/Professional and/or the Consultancy Organisation

**"Project/Statement of Work Price"**

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

**"Property"**

means the property, other than real property, issued or made available to the MSP by the Customer in connection with the Contract

**"Proposal"**

means the information submitted by the Consultant/Professional or Consultancy Organisation to the MSP for consideration by the MSP and the Customer. This information must include details regarding the Consultant/Professional including but not limited to their area of expertise, previous relevant project history and must detail how they would complete the Project/Statement of Work

**"Quality Standards"**

means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the Food Standards Agency, the International Organisation for Standardisation or other reputable or equivalent authority (and their successor authorities), that a skilled and experienced operator in the same type of industry or business sector as the MSP 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

<b>"Request for Information"</b>	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term <b>"Request"</b> shall apply)
<b>"Services"</b>	the services to be supplied as set out in the Order Form
<b>"Sub-Processor"</b>	means any third Party appointed to Process Personal Data on behalf of the MSP related to this Contract;
<b>"Staff"</b>	means all persons employed by the MSP to perform its obligations under the Contract together with the MSP's servants, agents, managed service providers, Consultants/Professionals or Consultancy Organisations used in the performance of its obligations under the Contract
<b>"Staff Vetting Procedures"</b>	means the Customer's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive or confidential nature or the handling of information which is subject to any relevant security measure
<b>"Tender"</b>	means the document(s) submitted by the MSP to the Customer in response to the Customer's invitation for formal offers to supply it with the Services
<b>"Term"</b>	means the period commencing on the Commencement Date and ending on 30/09/2026 or on earlier termination of this Contract
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales
<b>"Year"</b>	means a calendar year
<b>"YPO"</b>	means YPO, any employee, agent, servant or representative of YPO or any other public authority or person employed on behalf of YPO

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

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- 1.1. Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2. Words importing the masculine include the feminine and the neuter;
- 1.3. The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

- 1.4. References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5. References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;
- 1.6. Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.7. Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.8. Reference to any employees of the MSP shall be deemed to include the MSP's agents and sub-contractors unless expressly stated otherwise.
- 1.9. "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

## **2. INITIAL CONTRACT PERIOD**

- 2.1. The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3.

## **3. EXTENSION OF INITIAL CONTRACT PERIOD**

- 3.1. Subject to satisfactory performance of its obligations under the Contract by the MSP during the Initial Contract Period, the Customer may, by giving written notice to the MSP not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

## **4. MSP STATUS**

- 4.1. At all times during the Contract Period the MSP shall be an independent MSP and nothing in the Contract shall create 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 save as expressly permitted by the terms of the Contract.

## **5. PROVISION OF MANAGEMENT INFORMATION**

- 5.1. The MSP shall submit Management Information to YPO in the form set out in Schedule 3 of the Framework Agreement, and to the Customer in such form as may be specified, throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with any Contracting Authority.
- 5.2. YPO may share the Management Information provided by the MSP with any Contracting Authority.
- 5.3. YPO may make changes to the Management Information which the MSP is required to supply and shall give the MSP at least one (1) Month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the MSP.

## **6. CUSTOMER OBLIGATIONS**

- 6.1. Save 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 upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the MSP.
- 6.2. The Customer will endeavour to have their Order annotated with the relevant contract reference number, but this cannot be guaranteed on all Orders.
- 6.3. The Customer shall respond to any reasonable request for information from the MSP.
- 6.4. The Customer will assign an authorised representative who will liaise with the MSP's Contract Manager, to ensure both Parties use reasonable endeavours to meet their contractual obligations.
- 6.5. The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).
- 6.6. The Customer shall ensure that they provide a reasonable level of detail to the MSP at all times in order for the MSP to provide the Services and to pass onto the Consultant/Professional or Consultancy Organisation in order for them to put together a Proposal.
- 6.7. The Customer shall ensure that they provide all relevant information to the Consultant/Professional or Consultancy Organisation in order for them to complete the Project/Statement of Work.

## **7. ENTIRE AGREEMENT**

- 7.1. Subject to the provisions of the Framework Agreement relating to Call-Off Contracts, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2. Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 7.3. Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
  - 7.4.1. the Order Form;
  - 7.4.2. the clauses of the Contract; and
  - 7.4.3. any other document referred to in the clauses of the Contract.
- 7.5. For the avoidance of doubt any terms that the MSP may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.

- 7.6. The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

## **8. NOTICES**

- 8.1. Except as otherwise expressly provided within 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.
- 8.2. 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 the recorded delivery service) or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 8.3. For the purposes of Clause 8.2, the address of each Party shall be:
- 8.3.1. For the Customer: the address set out in the Order Form.
- 8.3.2. For the MSP: the address set out in the Framework Agreement.
- 8.4. Either Party may change its address for service by serving a notice in accordance with this Clause.

## **9. MISTAKES IN INFORMATION**

- 9.1. Subject to any inputs from the Customer, the MSP shall be responsible for the accuracy of all documentation and information supplied to the Customer by the MSP in connection with the supply of the Services, including the accuracy of any Project/Statement of Work information supplied by the MSP or the Consultant /Professional or the Consultancy Organisation and, subject to Clause 41.3.2, shall pay the Customer any extra costs directly occasioned by any discrepancies, errors or omissions therein.

## **10. CONFLICTS OF INTEREST**

- 10.1. The MSP shall take appropriate steps to ensure that neither the MSP 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 MSP or connected company and the duties owed to the Customer under the provisions of the Contract.
- 10.2. The MSP shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
- 10.3. The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the MSP and/or to take such other steps it deems necessary 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 MSP and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

## **11. PREVENTION OF FRAUD**

- 11.1. The MSP shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff, Consultants/Professionals, Consultancy Organisations and the

MSP (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

- 11.2. The MSP shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 11.3. If the MSP, its Staff, any Consultant/Professional or Consultancy Organisation commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Customer, the Customer may, subject to Clause 41: -
  - 11.3.1. terminate the Contract with immediate effect by giving the MSP notice in writing and recover from the MSP 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 Contract Period; and/or
  - 11.3.2. recover in full from the MSP any other loss sustained by the Customer in consequence of any breach of this Clause.

## **SUPPLY OF SERVICES**

### **12. SUPPLY OF THE SERVICES**

- 12.1. The MSP shall supply the Services to the Customer in accordance with the provisions of the Contract and to fulfil the requirements of the Customer.
- 12.2. The MSP shall:
  - 12.2.1. comply with all reasonable instructions given to the MSP and its Staff by the Customer in relation to the Services from time to time, including reasonable instructions to reschedule or alter the Services;
  - 12.2.2. immediately report to the Customer's representative any matters which involve or could potentially involve a conflict of interest as set out in Clause 10;
  - 12.2.3. co-operate with the Customer and the Customer's other professional advisers in relation to the Services as required by the Customer;
  - 12.2.4. comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each as notified to the MSP in writing by the Customer including where applicable, but not limited to, such policies, procedures, codes and practices listed in Appendix 1. The Customer is able to request additional policy compliance from the MSP during the Contract Period;
  - 12.2.5. understand the meaning of the importance of the Projects/Statement of Works, Milestones and how these must be monitored against;
  - 12.2.6. develop a well-established Consultant/Professional and Consultancy Organisation market to be able to achieve the deliverables of a public sector organisation.
- 12.3. The MSP shall not:
  - 12.3.1. knowingly act at any time during the Contract Period in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Services;

- 12.3.2. incur any expenditure which would result in any estimated figure for any element of the Services being exceeded without the Customer's written consent;
  - 12.3.3. without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Services;
  - 12.3.4. pledge the credit of the Customer in any way;
  - 12.3.5. engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer;
  - 12.3.6. without the prior written consent of the Customer, introduce new methods or systems which materially impact on the provision of the Services.
- 12.4. Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 12.5. Where the MSP is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the MSP's obligations under the Contract.

#### **Variation of Services**

- 12.6. The Customer may request a variation to the Services at any time provided that such variation does not amount to a material change to the delivery aims and outcomes of the Project/Statement of Work (as determined by both the Customer and the MSP).
- 12.7. Any request by the Customer for a variation to the Services shall be by written notice to the MSP:
- 12.7.1. giving sufficient information for the MSP to assess the extent of the variation and any additional costs that may be incurred; and
  - 12.7.2. specifying a reasonable timeframe within which the MSP must respond to the request, and the MSP shall respond to the request within such timeframe.
- 12.8. Any such variation agreed between the Customer and the MSP pursuant to Clause 38 shall not be valid unless in writing and signed by the Parties. Furthermore, any written and signed variation between the Parties shall be appended to the Order Form.
- 12.9. In the event that the MSP and the Customer are unable to agree to a proposed variation including any change to the Project/Statement of Work Price in connection with the requested variation to the Services, the Customer may agree that the MSP should continue to perform its obligations under the Contract without the variation, or may terminate the Contract with immediate effect, except where the MSP has already delivered part or all of the Order in accordance with the Order Form or where the MSP can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

### **13. THE SERVICES**

#### **13.1. General**

- 13.1.1. If the MSP is appointed by the Customer, the MSP shall provide the Services to the Customer in accordance with:

- 13.1.1.1. the provisions of the Framework Agreement and each Call-Off Contract; and

- 13.1.1.2. the Customer's reasonable requests from time to time.
- 13.1.2. The MSP shall perform the Services by the date agreed in writing or if no date is agreed, in a timely manner to meet the reasonable requirements of the Customer and understands that a degree of flexibility may be requested by the Customer in relation to the way the Services are provided to each Contracting Authority.
- 13.1.3. The MSP shall ensure that it maintains sufficient skilled and experienced Staff to provide the Services to the highest industry standard and in a timely fashion. In addition, the MSP shall ensure that its employees are adequately trained and understand the implications and duties of relevant employment Law and treat all Consultants/Professionals fairly, equally and in a professional and appropriate manner.
- 13.1.4. The MSP must ensure that the Customer is provided with contact details for any enquiries they have during business hours (Monday – Friday, 0900-17:00). This must include email addresses and telephone numbers.
- 13.1.5. The MSP must ensure that all Consultants/Professionals or Consultancy Organisations appointed in relation to a Project/Statement of Work are provided with contact details for any enquiries they have during business hours (Monday – Friday, 0900-17:00). This must include email addresses and telephone numbers.
- 13.1.6. The MSP must be able to evidence their process of issuing requests for submissions and receiving submissions back and how these are reviewed, if requested by the Customer. These processes must be in line with the specification received from the Customer.
- 13.1.7. The MSP agrees to co-operate with the Customer regarding a transfer of information in respect of each Project/Statement of Work requirement, in order to ensure that the Consultant/Professional or Consultancy Organisation is suitable for such Project/Statement of Work and to comply with its obligations under the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 13.1.8. The MSP shall always endeavour to ensure the suitability of a Consultant/Professional or Consultancy Organisation (including without limitation, that each Consultant/Professional or Consultancy Organisation is skilled and competent with the appropriate qualifications, specialist knowledge and expertise for those tasks that they will be required to perform) and to maintain a high standard of service and integrity.
- 13.1.9. The MSP must ensure that the potential Consultants/Professionals and Consultancy Organisations are aware that at no time is there any guarantee of a Project/Statement of Work. The MSP will select which Consultants/Professionals or Consultancy Organisation they believe are suitable for the Project/Statement of Work and put forward those Proposals to the Customer. The Customer will then decide which Consultant/Professional, or Consultancy Organisation will deliver the Project/Statement of Work.
- 13.1.10. The MSP shall not submit any Consultant's/Professional's or Consultancy Organisation's details to the Customer on a speculative basis unless the prior written consent of the Customer is obtained.
- 13.1.11. During the Contract Period the MSP shall be obliged:
- 13.1.11.1. to comply properly with the requirements of all applicable Laws and agreements relating to payment of VAT, corporation taxes, income tax and other taxes and charges levied in respect of the Customer's use of the MSP and the Project/Statement of Work Price or MSP Fee payable to it under this Contract and any tax liabilities in respect of the

Consultants/Professionals or Consultancy Organisation and the Staff (where applicable);

- 13.1.11.2. to perform the checks to establish and confirm that each Consultant/Professional and each of the MSPs' Staff is entitled to live and work in the United Kingdom. Should any Consultant/Professional and/or MSP's Staff cease to be entitled to live and work in the United Kingdom at any time during the term of a Project/Statement of Work to the Customer, the MSP shall immediately notify the Customer of this fact and the Customer will be entitled to immediately terminate any relevant agreement in respect of that Consultant/Professional and/or the MSP's Staff. For the avoidance of doubt, it is assumed that a Consultancy Organisation has carried out employability checks in the normal course of their employment on each individual supporting in the completion of the Project/Statement of Work; and
  - 13.1.11.3. to provide proof of a Consultant's/Professional's qualifications, training and experience as requested by the Customer or required by Law or any professional body for the performance of the Project/Statement of Work. For the avoidance of doubt, a Consultancy Organisation is responsible for providing qualified and experienced individuals to support in the completion of the Project/Statement of Work but do not have to provide evidence of an individual's qualifications, training and evidence; and
  - 13.1.11.4. to support the Customer, if requested, in completing the IR35 checks for all Consultants/Professionals.
- 13.1.12. The MSP shall procure that all employees, Consultants/Professionals, Consultancy Organisations and the MSP's Staff shall:
- 13.1.12.1. attend such location as may be reasonably required for the proper provision of the Services;
  - 13.1.12.2. observe the Customer's general rules and procedures with regards to the Project/Statement of Work including without limitation the Customer's policies in respect of: IT, health and safety at work, security, smoking, dress code, attendance and Code of Conduct. Employees, Consultants/Professionals and the MSP's Staff (as applicable) will, on commencement of the Project/Statement of Work, be given access to all of the Customer's relevant policies and guidelines, which must be followed;
  - 13.1.12.3. notify the Customer as far as possible in advance of any period over which they will be unable to carry out the Project/Statement of Work or provide the Services (as appropriate) due to holiday, sickness, maternity leave, shared parental leave, paternity leave or other reason for non-attendance;
  - 13.1.12.4. act in a civil, co-operative and non-discriminatory fashion towards the Customer's employees, clients and other business contacts;
  - 13.1.12.5. acknowledge and agree that the Customer shall at all time have the right without thereby being in breach of this Contract, to require the MSP to remove immediately from the Customer's site any employees, Professionals/Consultants engaged there on a Project/Statement of Work or any of the MSP's Staff who are providing the Services.
- 13.1.13. The MSP shall ensure that in putting forward a Consultant's/Professional's or Consultancy Organisation's Proposal in response to a brief by the Customer, that the MSP has a supply chain management process in place and must evidence this to YPO or the Customer upon request.

## 13.2. **Consultant/Professional and Consultancy Organisation – Specific Terms**

### **Pre-Engagement**

- 13.2.1. The MSP must be able to offer to all Contracting Authorities the option of having access to Consultants/Professionals or Consultancy Organisations and will recommend the most suitable route to the Customer.
- 13.2.2. The MSP shall ensure that they maintain good relationships with and access to qualified Consultants/Professionals and Consultancy Organisations in all different areas of expertise to make sure they have a wide coverage to be able to respond to the Customer's requests quickly.
- 13.2.3. The MSP must work with the Customer to understand their requirements fully. This includes providing information, advice and guidance to the Customer regarding their requirements and assisting the Customer to develop their requirements and ensure their suitability. This also includes assessing if the Project/Statement of Work is needed.
- 13.2.4. If the Customer already knows the Consultant/Professional or Consultancy Organisation they wish to work with then the MSP shall use all reasonable endeavours to onboard that Consultant/Professional or Consultancy Organisation onto their supply chain.
- 13.2.5. If the Customer knows the service they will require, the MSP must support them in finding a solution or a suitable Consultant/Professional or Consultancy Organisation to deliver this.
- 13.2.6. If the Customer knows the outcome of the Project/Statement of Work but requires the MSP to support or create the specification, then the MSP must work with the Customer to prepare any business cases or put together a document detailing their requirements.

### **Vetting**

- 13.2.7. The MSP shall ensure that the Consultant/Professional is fully vetted, audited and ready to deliver the requirements relevant to their Consultancy area. This vetting process will be in line with the MSP's own vetting and approval process. This should include but is not limited to checking all skills, qualifications and experience necessary for completion of the Project/Statement of Work as well as any additional requirements the Customer has, for example if DBS checks are in place.
- 13.2.8. It is trusted that a Consultancy Organisation will provide individuals who have been correctly vetted for the relevant Project/Statement of Work.
- 13.2.9. The MSP will have and maintain an electronic management information system which will contain up to date information on all Consultants/Professionals and Consultancy Organisations.

### **Submissions**

- 13.2.10. The MSP must ensure transparency and consistency at all times.
- 13.2.11. The MSP must not put itself into a position where the MSP's interests conflict with the interests of YPO or any Contracting Authority.
- 13.2.12. The MSP will arrange any communication with the Consultant/Professional and/or Consultancy Organisation that the Customer requests.

- 13.2.13. The Customer will decide which Consultant's/Professional's or Consultancy Organisation's submission to accept using a fair and transparent process and will inform the MSP of its decision. The MSP will inform the Consultants/Professionals and/or Consultancy Organisations of the outcome and subject to the successful Consultant/Professional or Consultancy Organisation accepting the offer, arrange the commencement of the Project/Statement of Work.
- 13.2.14. The MSP will enter into a contract with the successful Consultant/Professional or Consultancy Organisation prior to the Project/Statement of Work commencement. A separate contract must be in place for each Project/Statement of Work. Copies of this contract must be provided to the Customer upon request.
- 13.2.15. The MSP must agree Milestones with the Customer and track the Project/Statement of Work against these Milestones. It is the responsibility of the MSP to ensure that the Consultant/Professional or Consultancy Organisation achieves the outcomes required by the Customer.

### **Payment**

- 13.2.16. Subject to the Customer's timely payment, the MSP shall be wholly responsible for the payment to the Consultant/Professional or Consultancy Organisation of all invoices due in relation to the Services delivered in line with the Contract. Subject to Clauses 41.3.2 and 41.13, the MSP shall indemnify and hold harmless YPO and the Customer as a result of any failure by the MSP to pay any such invoices or taxation (if applicable) and any deductions required by law anywhere in the world.

### **During the Project/Statement of Work**

- 13.2.17. The MSP must carry out reporting, Milestone reviews and Management Information tracking as per the Contract, Order Form, specification and Invitation to Tender. The MSP shall allow the Customer access to the MSP's system or records to monitor the status of a Project/Statement of Work at no additional cost to the Customer.
- 13.2.18. The MSP must ensure that the successful Consultant/Professional or Consultancy Organisation is aware of any obligations that they have to comply with under the Framework Agreement or Contract.
- 13.2.19. Any feedback that is provided to the MSP by the Customer regarding the Consultant/Professional or Consultancy Organisation must be passed on to the Consultant/Professional or Consultancy Organisation.
- 13.2.20. In the event that a Consultant/Professional or Consultancy Organisation proves to be unsatisfactory, and the Customer notifies the MSP within the zero (0) day of the commencement of the Project/Statement of Work that this is the case, no charge will be made provided that the Consultant/Professional or Consultancy Organisation completes no more than zero (0) day of work at the site and is asked by the Customer to leave the site or Base Location at the earliest reasonable time. At the Customer's request, the MSP will take immediate steps to source a replacement.
- 13.2.21. In the event that a Project/Statement of Work terminates within the term of the Project/Statement of Work (whether by expiry of notice or otherwise) and provided:
- 13.2.21.1. the Customer notifies the MSP in writing of the termination of the Project/Statement of Work within fourteen (14) days of such termination;

13.2.21.2. the termination is not due to redundancy or the Consultant's/Professional's ill health; and

13.2.21.3. nothing has materially changed with regards to the Project/Statement of Work or the Services which would precipitate the Consultant/Professional or Consultancy Organisation to not complete the Project/Statement of Work

then the MSP shall endeavour to find a replacement at no extra cost to the Customer for the balance of the originally anticipated contract period and if a replacement cannot be found within a reasonable period of time as judged solely by the Customer, and communicated to the MSP with reasonable notice, the MSP shall promptly refund all of the Day Rate and MSP Fee paid by the Customer on a pro-rated basis relating to the period of the original contract remaining.

13.2.22. The MSP and the Customer shall ensure that all Consultants/Professionals and Consultancy Organisations provided to the Customer remain at all times the contractors of the MSP and do not become employees of the Customer and/or YPO.

13.2.23. For the avoidance of doubt, all Project/Statement of Work Deliverables and outcomes will be set by the Customer and agreed with the MSP and the Consultant/Professional or Consultancy Organisation. The Customer will report to the MSP if any outcomes or Milestones are not being met. The MSP will remain at all times responsible for the overall delivery of the Services.

13.2.24. Subject to Clauses 41.3.2, 41.13 and 43, the MSP shall indemnify and hold the Customer and YPO harmless against all liabilities arising out of or in connection with Clause 13.2.22.

### 13.3. **MSP Non-Solicitation**

13.3.1. The MSP and the Customer (on behalf of itself and its employees) undertakes that during the Contract Period and for six (6) Months after termination, it will:

13.3.1.1. not canvas nor solicit for direct or indirect employment any personnel including employees of the other Party; and

13.3.1.2. not solicit or encourage the other Party's personnel including employees to leave its employ, nor recommend its personnel to any third party that might result in an approach to personnel to leave.

13.3.2. The MSP (on behalf of itself and its employees) undertakes that during any Project/Statement of Work, it will:

13.3.2.1. not canvas nor solicit for direct or indirect employment the Consultant/Professional or an individual from the Consultancy Organisation undertaking the Project/Statement of Work; and

13.3.2.2. not solicit or encourage a Consultant/Professional or an individual from the Consultancy Organisation during the completion of their Project/Statement of Work to leave its employ, nor recommend them to any third party that might result in an approach to the Consultant/Professional or the individual from the Consultancy Organisation to leave.

13.3.3. The MSP acknowledges and agrees that no fee shall be payable should the MSP introduce a current employee of the Customer to one of its group companies.

13.3.4. In the event a Customer or MSP employee approaches the other Party either directly or in response to an advertisement, the Customer or MSP is free to work with that employee provided that they keep written evidence from the employee that they initiated the approach.

13.3.5. A Consultant/Professional or any individual at a Consultancy Organisation cannot be prevented from applying from any publicly advertised roles at the Customer.

#### **14. MANNER OF PROVIDING SERVICES**

14.1. The MSP shall at all times comply with the relevant Law, codes of conduct and regulations governing the provision of Services.

14.2. Where applicable the MSP shall maintain and shall ensure that any Staff utilised in the provision of the Services maintain accreditation and certification with the relevant authorised body. To the extent that the standard of Services has not been specified in the Contract the MSP shall agree the relevant standard of the Services with the Customer prior to the provision of the Services, and in any event the MSP shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

14.3. The MSP shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the provision of the Services.

14.4. The MSP shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation authority.

#### **15. CONTRACT PERFORMANCE**

15.1. In supplying the Services, the MSP shall perform its obligations under the Contract:

15.1.1. with appropriately experienced, accredited, qualified and trained Staff with all due care and attention;

15.1.2. in a timely manner; and

15.1.3. in compliance with applicable Laws.

15.2. The MSP shall ensure that:

15.2.1. the Services conform in all respects with the specifications set out, in either the Order Form or, where applicable, the Framework Agreement;

15.2.2. the Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;

15.2.3. the Services conform in all respects with all applicable Laws; and

15.2.4. the MSP shall discharge its obligations hereunder with all due skill, care and diligence including Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

15.3. The MSP must be committed to delivering continuous improvement of the Services, process and all systems which are in place.

#### **16. MSP DELIVERY TEAM**

16.1. The Parties have agreed to the appointment of the MSP's Delivery Team. The MSP shall inform the Customer within ten (10) Working Days or as soon as reasonably possible of any changes to their MSP Delivery Team and shall ensure that a meeting is arranged between the Parties to establish a good working relationship with the new member of the MSP Delivery Team.

- 16.2. The MSP acknowledges that the MSP Delivery Team are essential to the proper provision of the Services to the Customer and will ensure that all members of the MSP Delivery Team are competent to carry out the tasks assigned to them. The MSP acknowledges and agrees that where any role in the MSP Delivery Team is vacant, the MSP will ensure that such vacancy is filled as soon as is reasonably practicable.
- 16.3. The Customer may also require the MSP to remove any member of the MSP Delivery Team that the Customer (acting reasonably at all times) considers in any respect unsatisfactory. The Customer shall not be liable for the cost of removing and/or replacing any member of the MSP Delivery Team.

## **17. MSP STAFF**

- 17.1. The Customer may, by written notice to the MSP, refuse to admit onto, or withdraw permission to remain on, the premises: -
  - 17.1.1. any member of the Staff; or
  - 17.1.2. 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.
- 17.2. The MSP's Staff, engaged within the boundaries of the premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those premises.
- 17.3. The decision of the Customer as to whether any person is to be refused access to the premises shall be final and conclusive.
- 17.4. The MSP shall comply with the Staff Vetting Procedures in respect of all MSP Staff employed or engaged by the MSP at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

## **PAYMENT AND PROJECT/STATEMENT OF WORK PRICE**

### **18. PROJECT/STATEMENT OF WORK PRICE**

- 18.1. In consideration of the MSP's performance of its obligations under the Contract, the Customer shall pay the Project/Statement of Work Price in accordance with Clause 19.
- 18.2. Each individual payment which makes up the Project/Statement of Work Price will become due once each corresponding Milestone has been met. All Milestones will be agreed between the Customer and the MSP prior to the commencement of a Project/Statement of Work.
- 18.3. The Customer shall, in addition to the Project/Statement of Work Price and following evidence of a valid VAT invoice, pay the MSP a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 18.4. Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the MSP will be allowed for any addition to the Project/Statement of Work Price on the grounds of any matter relating to any document forming part of the Framework Agreement, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced managed service provider could have satisfied himself by reference to the Customer or any other appropriate means.

### **19. PAYMENT AND VAT**

- 19.1. The Customer shall pay all sums due to the MSP in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile and agreed Milestone payments set out in the Order Form.
- 19.2. Where the MSP submits an invoice to the Customer in accordance with Clause 19.1 above, the Customer will consider and validate that invoice within ten (10) Working Days. Where the Customer does not validate a submitted invoice within ten (10) Working Days, the invoice will be deemed validated after expiry of the ten (10) Working Day period.
- 19.3. The MSP shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 19.4. The MSP shall ensure that they pay their Consultants/Professionals or Consultancy Organisations where no timescales are indicated within their sub-contract within five (5) Working Days of the MSP receiving payment from the Customer.
- 19.5. The MSP shall add VAT to the Project/Statement of Work Price at the prevailing rate as applicable.
- 19.6. The MSP shall indemnify YPO and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Customer at any time in respect of the MSP's failure to account for or to pay any VAT relating to payments made to the MSP under the Contract. Any amounts due under this Clause 19.6 shall be paid by the MSP 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.
- 19.7. The MSP shall not suspend the supply of the Services unless the MSP is entitled to terminate the Contract under Clause 46 for failure to pay undisputed sums of money.

## **20. SET OFF**

- 20.1. The MSP shall not be entitled to retain or set-off any amount due to the Customer by it but the Customer may retain or set-off any amount owed to it by the MSP under this Contract which has fallen due and payable against any amount due to the MSP under this Contract.
- 20.2. If the payment or deduction of any amount referred to in Clause 20.1 is disputed, then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

## **21. RECOVERY OF SUMS DUE**

- 21.1. Wherever under the Contract any sum of money is recoverable from or payable by the MSP (including any sum which the MSP 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 MSP under the Contract or under any other agreement or contract with the Customer.
- 21.2. Any overpayment by either Party, whether of the Project/Statement of Work 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.
- 21.3. The MSP shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the MSP has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the MSP.

- 21.4. 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.

## **STATUTORY OBLIGATIONS AND REGULATIONS**

### **22. PREVENTION OF BRIBERY AND CORRUPTION**

#### 22.1. The MSP:

- 22.1.1. has not, will not, and will procure that its Staff, Consultants/Professionals or Consultancy Organisations have not, and will not commit a Prohibited Act in connection with this Contract;
- 22.1.2. has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010;
- 22.1.3. 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 YPO or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Customer, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Customer prior to the execution of this Contract.
- 22.2. The MSP will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the MSP arising as a result.
- 22.3. The MSP will provide to the Customer certification (if requested to do so), in writing in such form as may be provided by the Customer, to be signed by an officer of the MSP, to confirm to the best of their knowledge, of the compliance with this Clause 22 by:
- 22.3.1. the MSP;
- 22.3.2. all persons associated with the MSP; and
- 22.3.3. any other persons who are supplying Services in connection with this Contract.
- 22.4. Certification (if requested) will be provided by the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Contract Period. The MSP will provide any evidence of compliance as may reasonably be requested by the Customer.
- 22.5. The MSP will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the MSP where appropriate.
- 22.6. Should the MSP become aware of or suspect any breach of Clause 22.1 it will notify the Customer immediately.
- 22.7. Following notification under Clause 22.6, the MSP will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The MSP's obligations under this Clause 22.7 shall survive the expiry or termination of this Contract for a further period of six (6) Years.

- 22.8. The Customer may recover in full from the MSP and the MSP shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 22, whether or not the Contract has been terminated.
- 22.9. The Customer may terminate this Contract and any Order immediately upon serving written notice if the MSP or its Staff whether or not acting with the MSP's knowledge, breaches Clause 22. Before exercising its right of termination under this Clause 22.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 22.9.1. the MSP or a senior officer of the MSP; or
- 22.9.2. a member of Staff who is not acting independently of the MSP. The expression 'not acting independently of' (when used in relation to the MSP or its Staff) means and shall be construed as acting;
- 22.9.2.1. with the authority of;
- 22.9.2.2. with the actual knowledge; of any one or more of the MSP's or Staff (as applicable), directors or partners; or
- 22.9.2.3. in circumstances where any one or more of the directors (or partners) of the MSP or its Staff (as applicable) ought reasonably to have had knowledge.
- 22.10. Any notice of termination by the Customer under Clause 22.9 must specify:
- 22.10.1. the nature of the Prohibited Act;
- 22.10.2. the identity of the person whom the Customer believes has committed the Prohibited Act; and
- 22.10.3. the date on which the Contract will terminate.
- 22.11. In the event of any breach of Clause 22, the Customer is entitled to recover from the MSP the value of any gift, consideration or commission.
- 22.12. Notwithstanding Clause 55 any dispute relating to:
- 22.12.1. the interpretation of this Clause 22; or
- 22.12.2. the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Customer and its decision shall be final and conclusive.
- 22.13. Termination under Clause 22.9 will:
- 22.13.1. be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract;
- 22.13.2. prohibit the MSP from claiming any damages for early termination;
- 22.13.3. allow the Customer to recover from the MSP the amount of any loss suffered by the Customer resulting from the termination (subject to Clause 41.3.2); and
- 22.13.4. entitle the Customer to be indemnified by the MSP for any additional costs, losses, damages or expenses incurred in re-procuring and obtaining the Services from another party.

22.14. For the avoidance of doubt, the MSP must ensure that the Consultant/Professional and Consultancy Organisation comply with the obligations of this Clause 22.

## **23. DISCRIMINATION**

23.1. The MSP shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

23.2. The MSP shall take all reasonable steps to secure the observance of Clause 23.1 by all its Staff and servants, employees, or agents of the MSP and all managed service providers and staff employed in the execution of the Contract.

## **24. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

24.1. A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

## **25. ENVIRONMENTAL REQUIREMENTS**

25.1. The MSP shall, when working on the premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **26. HEALTH AND SAFETY**

26.1. The MSP shall 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 MSP of any health and safety hazards which may exist or arise at the premises, and which may affect the MSP in the performance of its obligations under the Contract.

26.2. While on the premises, the MSP shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

26.3. The MSP shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

26.4. Both Parties shall 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 supply of the Services under the Contract.

26.5. The MSP shall 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.

## **PROTECTION OF INFORMATION**

### **27. DATA PROTECTION**

27.1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. Clause 27 is in addition to, and does not relieve, remove, or replace a Party's obligations or rights under the Data Protection Legislation.

27.2. Where Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Customer is the Data Controller (the "**Controller**"), and the MSP is the Data Processor (the "**Processor**").

27.3. The Processor shall:

27.3.1. Process the Personal Data only in accordance with the Controller's written instructions which are set out in Appendix 5 unless the Processor is required by Law to otherwise Process the Personal Data. Where the Processor relies on Law as the basis for Processing Personal Data, the Processor shall promptly notify the Controller prior to Processing, unless the Law prohibits the Processor from so notifying the Controller;

27.3.2. ensure that at all times it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of the Personal Data and against accidental 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;

27.3.3. ensure that all Processor staff who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;

27.3.4. not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Controller (save where such disclosure or transfer of Personal Data is specifically authorised under this Contract);

27.3.5. not transfer any Personal Data outside of the United Kingdom or the European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

27.3.5.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer;

27.3.5.2. the Data Subject has enforceable rights and effective legal remedies;

27.3.5.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

27.3.5.4. the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

27.3.6. assist the Controller in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators;

27.3.7. take all reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that they:

27.3.7.1. are aware of and comply with the Processor's duties under the Contract;

27.3.7.2. are subject to appropriate confidentiality undertakings with the Processor and/or Sub-Processor;

27.3.7.3. 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 Controller, or as otherwise permitted by this Contract; and

- 27.3.7.4. have undergone adequate training in the use, care, protection, and handling of Personal Data;
- 27.3.8. notify the Controller without undue delay if it becomes aware of a Data Loss Event or if it:
- 27.3.8.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 27.3.8.2. receives a request to rectify, block, or erase any Personal Data;
  - 27.3.8.3. receives any other request, complaint, or communication relating to either Party's obligations under the Data Protection Legislation;
  - 27.3.8.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; and/or
  - 27.3.8.5. 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;
  - 27.3.8.6. taking into account the nature of the Processing, provide the Controller with full cooperation and assistance (within the timescales reasonably required by them) in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication, or request made (as referred to at Clause 27.3.8), including by promptly providing to the Controller:
    - 27.3.8.7. full details and copies of the complaint, communication, or request;
    - 27.3.8.8. such assistance as is reasonably requested to enable compliance with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
    - 27.3.8.9. at its request, any Personal Data it holds in relation to a Data Subject;
    - 27.3.8.10. such assistance as requested following a Data Loss Event; and
    - 27.3.8.11. such assistance as requested with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office; and
- 27.3.9. if requested by the Controller, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 27 and provide copies of all documentation relevant to such compliance including protocols, procedures, guidance, training, and manuals.
- 27.4. The Processor shall immediately inform the Controller if, in the opinion of the Processor, an instruction infringes the Data Protection Legislation.
- 27.5. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 27 and allow for audits by the Controller or the Controller's designated auditor.
- 27.6. The Parties shall use reasonable endeavours to assist each other to comply with any obligations under the Data Protection Legislation and shall not perform their obligations under this Contract in such a way as to cause either Party to breach any of their obligations under the Data Protection Legislation to the extent the other is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

27.7. The Parties shall each designate a data protection officer if required by the Data Protection Legislation. Details of each Party's data protection officer (if required) are outlined below:

<b>For the MSP: -</b>	<b>For the Customer: -</b>
Captured at order form level to ensure accurate on a project-by-project basis	Captured at order form level to ensure accurate on a project-by-project basis

27.8. Before allowing any Sub-Processor to Process any Personal Data related to this Contract, the Processor must:

27.8.1. notify the Controller in writing of the proposed Sub-Processor and Processing;

27.8.2. obtain the written consent of the Controller; and

27.8.3. enter into a written agreement with the Sub-Processor incorporating terms which are substantially similar to those set out in Clause 27 and in either case which the Processor undertakes reflect, and will continue to reflect, the requirements of the Data Protection Legislation.

27.9. The Processor shall remain fully liable for all acts and/or omissions of any of its Sub-Processors.

27.10. The Controller may, at any time on not less than thirty (30) days' notices revise this Clause 27 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 replaced by attachment to this Contract).

**28. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

28.1. The MSP acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations.

28.2. The MSP shall and shall procure that its Staff shall:

28.2.1. transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

28.2.2. provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

28.2.3. provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the EIR.

28.3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

28.4. In no event shall the MSP respond directly to a Request for Information unless expressly authorised to do so by the Customer.

28.5. The MSP acknowledges that (notwithstanding the provisions of Clause 28.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of

Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the “Code”), be obliged under the FOIA, or the EIR to disclose information concerning the MSP of the Services:

28.5.1. in certain circumstances without consulting the MSP; or

28.5.2. following consultation with the MSP and having taken their views into account;

provided always that where Clause 28.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the MSP advanced notice, or failing that, to draw the disclosure to the MSP’s attention after any such disclosure.

28.6. The MSP shall ensure that all Information (where supplied) is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

28.7. The MSP acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 28.5.

## **29. CONFIDENTIAL INFORMATION**

29.1. Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

29.1.1. treat the other Party’s Confidential Information as confidential and safeguard it accordingly; and

29.1.2. not disclose the other Party’s Confidential Information to any other person without the owner’s prior written consent.

29.2. Clause 29.1 shall not apply to the extent that:

29.2.1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 36;

29.2.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

29.2.3. such information was obtained from a third party without obligation of confidentiality;

29.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

29.2.5. it is independently developed without access to the other Party’s Confidential Information.

29.3. The MSP may only disclose the Customer’s Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

29.4. The MSP shall not, and shall procure that its Staff do not, use any of the Customer’s Confidential Information received otherwise than for the purposes of this Contract.

29.5. At the written request of the Customer, the MSP shall procure that those members of the Staff identified in the Customer’s notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

- 29.6. Nothing in this Contract shall prevent the Customer from disclosing the MSP's Confidential Information:
- 29.6.1. to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - 29.6.2. to any consultant or other person engaged by the Customer or any person conducting a gateway review;
  - 29.6.3. for the purpose of the examination and certification of the Customer's accounts;
  - 29.6.4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 29.7. The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Consultant/Professional to whom the MSP's Confidential Information is disclosed pursuant to Clause 29.6 is made aware of the Customer's obligations of confidentiality.
- 29.8. Nothing in this Clause 29 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 29.9. The MSP shall not without the prior written consent of the Customer divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.
- 29.10. In the event that the MSP fails to comply with this Clause 29, the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.
- 29.11. The provisions of this Clause 29 shall apply notwithstanding termination of the Contract.

### **30. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 30.1. The MSP and the Consultant/Professional shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 30.1.
- 30.2. The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 30.3. The MSP shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

### **31. SECURITY**

- 31.1. The Customer shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The MSP shall comply with all reasonable security requirements of the Customer while on the premises and shall ensure that all Staff comply with such requirements.
- 31.2. The Customer shall provide to the MSP upon request copies of its written security procedures and shall afford the MSP upon request an opportunity to inspect its physical security arrangements.

## 32. INTELLECTUAL PROPERTY RIGHTS

- 32.1. Save as granted elsewhere under the Contract, neither the Customer nor the MSP shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 32.2. The MSP shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer Pre-Existing IPR or the Project Specific IPRs to any third party.
- 32.3. All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The MSP hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 32.4. The assignment under Clause 32.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 32.5. The MSP shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.
- 32.6. If requested to do so by the Customer, the MSP shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 32.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 32.7. The Customer hereby grants to the MSP a non-exclusive, revocable, non-assignable licence to use the Customer Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the MSP to supply the Services and/or supply the Deliverables.
- 32.8. Where the MSP is granted Approval by the Customer to use the third party rights, the MSP shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
- 32.9. The MSP shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the MSP of the Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 32.9.1. items or materials based upon designs supplied by the Customer; or
- 32.9.2. the use of data supplied by the Customer which is not required to be verified by the MSP under any provision of the Contract.
- 32.10. The Customer shall notify the MSP in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The MSP shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the MSP:
- 32.10.1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 32.10.2. shall take due and proper account of the interests of the Customer; and

32.10.3. shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).

32.11. If a Claim is made in connection with the Contract or in the reasonable opinion of the MSP is likely to be made, the MSP shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to: -

32.11.1. modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

32.11.2. procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer.

32.12. In the event that the MSP is unable to comply with Clauses 32.11.1 or 32.11.2 within twenty (20) Working Days of receipt of the MSP's notification the Customer may terminate the Contract with immediate effect by notice in writing and the MSP shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

32.13. In the event that a modification or substitution in accordance with Clause 32.11.1 is not possible so as to avoid the infringement, or the MSP has been unable to procure a licence in accordance with Clause 32.11.2 the Customer shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.

32.14. This Clause 32 sets out the entire financial liability of the MSP with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the MSP's financial liability for other Defaults or causes of action that may arise hereunder.

### **33. RECORDS AND AUDIT ACCESS**

33.1. The MSP, Consultant/Professional or Consultancy Organisation shall keep and maintain until six (6) Years after the date of termination or expiry (whichever is the earlier) 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 supplied under it, the Call-Off Contracts entered into with YPO and each individual customer and the amounts paid by each Contracting Authority.

33.2. The MSP, Consultant/Professional or Consultancy Organisation shall keep the records and accounts referred to in Clause 33.1 above in accordance with good accountancy practice.

33.3. The MSP shall on request provide such records and accounts (together with copies of the MSP's published accounts) during the Contract Period and for a period of six (6) Years after the expiry of the Contract Period to the Customer, the Customer's representatives and/or the Auditor as may be required from time to time.

33.4. The Customer shall use reasonable endeavours to ensure that each Audit does not unreasonably disrupt the MSP, Consultant/Professional or Consultancy Organisation or delay the provision or supply of Services save insofar as the MSP accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Customer.

33.5. Subject to the Customer's rights of Confidential Information, the MSP, Consultant/Professional or Consultancy Organisation shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including: -

- 33.5.1. all information requested by the Customer within the scope of the Audit;
  - 33.5.2. reasonable access to sites controlled by the MSP and to Equipment used in the provision of the Services; and
  - 33.5.3. access to the Staff.
- 33.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 33, unless the Audit reveals a Material Default by the MSP, Consultant/Professional or Consultancy Organisation in which case the MSP shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the Audit.

## **CONTROL OF THE CONTRACT**

### **34. TRANSFER AND SUB-CONTRACTING**

- 34.1. The MSP shall not assign, novate or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the MSP of any obligation or duty attributable to the MSP under the Contract.
- 34.2. The MSP shall not be entitled to sub-contract any of its rights or obligations under this Contract without the express prior written consent of the Customer (such consent not to be unreasonably withheld or delayed). For the avoidance of doubt, the MSP is entitled to sub-contract any of its obligations under this Contract without the prior written consent of the Customer to any Consultant/Professional or Consultancy Organisation being used to complete a Project/Statement of Work, provided that the MSP has complied with the clauses of this Contract and the Framework Agreement in relation to Consultants/Professionals or Consultancy Organisations and the relevant processes and checks.
- 34.3. The MSP shall be responsible for the acts and omissions of its s Consultants/Professionals and Consultancy Organisations as though they are the actions and/or omissions of its own Staff.
- 34.4. The MSP shall ensure that all relevant obligations within the Framework Agreement and the Contract are flowed down to the Consultant/Professional or Consultancy Organisation via the sub-contract between the MSP and the Consultant/Professional or Consultancy Organisation.
- 34.5. Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the MSP to the Customer as soon as reasonably practicable.
- 34.6. Subject to Clause 34.8, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 34.6.1. any Contracting Authority; or
  - 34.6.2. any other authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
  - 34.6.3. any private sector authority which substantially performs the functions of the Customer, provided that any such assignment, novation or other disposal shall not increase the burden of the MSP's obligations under the Contract.
- 34.7. Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 34.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Customer.

- 34.8. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 34.6 to an Authority which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this Clause both such Authorities being referred to as the "**Transferee**"):
- 34.8.1. the rights of termination of the Customer in Clause 46 shall be available to the MSP in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - 34.8.2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the MSP.
- 34.9. The Customer may disclose to any Transferee any Confidential Information of the MSP which relates to the performance of the MSP's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the MSP's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 34.10. Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## 35. **WAIVER**

- 35.1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 35.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8.
- 35.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## 36. **VARIATION**

- 36.1. Subject to the provisions of this Clause 36.1, the Customer may request a variation to Services ordered provided that such variation does not amount to a material change to the Order (as determined by both the Customer and the MSP). Such a change is hereinafter called a "**Variation**".
- 36.2. The Customer may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 (the "**Variation Form**") to the MSP giving sufficient information for the MSP to assess the extent of the Variation and any additional cost that may be incurred. The MSP 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.
- 36.3. In the event that the MSP is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Project/Statement of Work Price, the Customer may:
- 36.3.1. agree to allow the MSP to continue to perform their obligations under the Contract without the Variation; or

- 36.3.2. terminate the Contract with immediate effect, except where the MSP has already delivered part or all of the Order in accordance with the Order Form or where the MSP can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 55.
- 36.3.3. If the Parties agree the Variation and any variation in the Project/Statement of Work Price, the MSP 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.

## **37. SEVERABILITY**

- 37.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 37.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the MSP shall immediately commence good faith negotiations to remedy such invalidity.

## **38. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES**

- 38.1. Where a complaint is received about the manner in which any Services have been supplied or work or a Project/Statement of Work has been performed or about any other matter connected with the performance of the MSP's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 46 of the Contract.
- 38.2. In the event that the Customer is of the reasonable opinion that there has been a Material Default of the Contract by the MSP, then the Customer may, without prejudice to its rights under Clause 46, do any of the following:
  - 38.2.1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the MSP shall have demonstrated to the reasonable satisfaction of the Customer that the MSP will once more be able to supply all or such part of the Services in accordance with the Contract;
  - 38.2.2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Project/Statement of Work Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - 38.2.3. terminate, in accordance with Clause 46, the whole of the Contract; and/or
  - 38.2.4. subject to Clause 41.3.2, charge the MSP for and the MSP 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 MSP for such part of the Services and provided that (i) the MSP has been given a reasonable opportunity to perform the Services prior to the Customer performing them or engaging a third party; and (ii) the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 38.3. If the MSP fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the MSP to remedy the failure and the MSP shall at its own cost and expense remedy such failure (and any

damage resulting from such failure), subject to Clause 41.3.2, within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

38.4. In the event that the MSP:

38.4.1. fails to comply with Clause 38.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

38.4.2. persistently fails to comply with Clause 38.3 above

the Customer may terminate the Contract with immediate effect by giving the MSP notice in writing.

### **39. CUMULATIVE REMEDIES**

39.1. Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **40. MONITORING OF CONTRACT PERFORMANCE**

40.1. The MSP shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the MSP may be required to produce under the Contract.

## **LIABILITIES**

### **41. LIABILITY, INDEMNITY AND INSURANCE**

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

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

41.1.2. Fraud or fraudulent misrepresentation by it or that of its Staff; and

41.1.3. any breach of any obligations implied by Section 12 of the Sale of Goods and Services Act 1979.

41.2. Subject to Clause 41.3 and Clause 41.4, the MSP shall indemnify and keep 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 by the MSP of its obligations under the Contract or the presence of the MSP or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the MSP, or any other loss which is caused directly by any act or omission of the MSP. The MSP shall not be responsible for any personal 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.

41.3. Subject always to Clause 41.4 and Clause 41.5, the liability of either Party for defaults shall be subject to the following financial limits:

41.3.1. the aggregate liability of either Party (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) for all defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed 125%; and

- 41.3.2. the annual aggregate liability under the Contract of either Party (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) for all other defaults shall in no event exceed the greater of 125% per cent of the Project/Statement of Work Price payable by the Customer to the MSP in the Year in which the liability arises.
- 41.4. Subject to Clause 41.1, in no event shall either Party be liable to the other for any:
- 41.4.1. loss of profits;
  - 41.4.2. loss of business;
  - 41.4.3. loss of revenue;
  - 41.4.4. loss of or damage to goodwill;
  - 41.4.5. loss of savings (whether anticipated or otherwise); and/or
  - 41.4.6. any indirect or consequential loss or damage
- 41.5. The Customer may, amongst other things, recover as a direct loss:
- 41.5.1. any additional operational and/or administrative expenses arising from the MSP's default;
  - 41.5.2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the MSP's default; and
  - 41.5.3. the additional cost of procuring replacement Services for the remainder of the Contract Period following termination of the Contract as a result of a default by the MSP.
- 41.6. Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the MSP to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the MSP that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 41.7. The MSP shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by the MSP, arising out of the MSP's performance of its obligations under 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 MSP. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) Years following the expiration or earlier termination of the Contract.
- 41.8. The MSP shall affect and maintain, where required, for the Contract Period in relation to the performance of the Contract:
- 41.8.1. public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000), or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and
  - 41.8.2. employer's liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000), or such higher limit as the Customer may reasonably require (and as required by Law) from time to time.
- 41.9. Any excess or deductibles under such insurances (including those referred to in Clauses 41.8 and 49.1) shall be the sole responsibility of the MSP.

41.10. The MSP 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 appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

41.11. If, for whatever reason, the MSP fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the MSP.

41.12. The provisions of any insurance or the amount of cover shall not relieve the MSP of any liabilities under the Contract. It shall be the responsibility of the MSP to determine the amount of insurance cover that will be adequate to enable the MSP to satisfy any liability referred to in Clause 41.

41.13. Excluding where the Customer directly causes the below cost, liability, demand or expense, the MSP shall indemnify the Customer, and shall be able to produce evidence of the same indemnity from the MSP's Consultants/Professionals on request, against each and every cost, liability, demand or expense (including for the avoidance of doubt redundancy payments) or any liability for unfair or wrongful dismissal incurred by the Customer in connection with any Project/Statement of Work under this Contract including but not limited to:

41.13.1. the MSP failing to pay any Consultant/Professional in connection with providing Services under this Contract;

41.13.2. any claim arising out of the MSP or its Consultants/Professionals failing to comply with their obligations both under this Contract and applicable Law; and

41.13.3. any claim arising directly due to the MSP or its Consultants/Professionals failing to disclose information reasonably requested in relation to any Professionals/Consultants in connection with providing Service under this Contract.

## **42. PROFESSIONAL INDEMNITY**

42.1. The MSP shall affect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and Consultants/Professionals involved in the supply of the Services affect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the MSP shall ensure professional indemnity insurance held by the MSP and by any agent, sub-contractor or consultant involved in the supply of the Services has cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000), or such higher limit as the Customer may reasonably require (and as required by Law or best industry practice) from time to time. Such insurance shall be maintained for a minimum of six (6) Years following the expiration or earlier termination of the Contract.

## **43. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

43.1. The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. Subject to Clause 41.3, the MSP shall at all times indemnify the Customer and keep 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 or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract. This indemnity shall not apply where the Customer has treated any Staff as its employees or where any Staff become employees of the Customer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

43.2. For the avoidance of doubt, the responsibility of IR35 will sit with the Customer with support from the MSP.

#### **44. WARRANTIES AND REPRESENTATIONS**

44.1. The MSP warrants and represents that:

- 44.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 44.1.2. the Contract is executed by a duly authorised representative of the MSP;
- 44.1.3. in entering the Contract, it has not committed any Fraud;
- 44.1.4. as at the Commencement Date, all information, statements and representations contained in the Tender response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 44.1.5. 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;
- 44.1.6. 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;
- 44.1.7. 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 MSP 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 MSP's assets or revenue;
- 44.1.8. 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;
- 44.1.9. the Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

44.2. In the three (3) Years prior to the date of the Contract:

- 44.2.1. 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;
- 44.2.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 44.2.3. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

#### **DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION**

##### **45. SUSPENSION**

- 45.1. Without prejudice to the Customer's right to terminate the Contract in Clause 46 below, the Customer may suspend the MSP's appointment to supply Services by giving notice in writing to the MSP. If the Customer provides notice to the MSP in accordance with this Clause 45, the MSP's appointment shall be suspended for the period set out in the notice or such other period notified to the MSP by the Customer in writing from time to time.
- 45.2. The MSP's appointment may be suspended to allow YPO and/or a Customer the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Services under this Contract. Should this occur the MSP will be suspended (at no cost to YPO or the Customer) whilst investigations take place. Any Orders already placed during this period shall be put on hold pending the outcome.
- 45.3. Following suspension of the MSP's appointment under this Clause 45 the MSP will be informed of the outcome as soon as possible and be advised whether or not the Contract has been terminated with immediate effect.

## **46. TERMINATION**

### **Termination - Insolvency and Change of Control**

- 46.1. The Customer may terminate the Contract with immediate effect by giving notice in writing where the MSP is a company and in respect of the MSP:
  - 46.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 46.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 46.1.3. a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
  - 46.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 46.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 46.1.6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
  - 46.1.7. being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 46.1.8. any event similar to those listed in Clause 46.1 occurs under the law of any other jurisdiction.
- 46.2. The Customer may terminate the Contract with immediate effect by notice in writing where the MSP is an individual and:
  - 46.2.1. an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the MSP's creditors;
  - 46.2.2. a petition is presented and not dismissed within fourteen (14) days or order made for the MSP's bankruptcy;

- 46.2.3. a receiver, or similar officer is appointed over the whole or any part of the MSP's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
  - 46.2.4. the MSP is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
  - 46.2.5. a creditor or encumbrance 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 MSP's assets and such attachment or process is not discharged within fourteen (14) days;
  - 46.2.6. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
  - 46.2.7. the MSP suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 46.3. The MSP shall notify the Customer immediately if the MSP undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
- 46.3.1. being notified that a Change of Control has occurred; or
  - 46.3.2. where no notification has been made, the date that the Customer becomes aware of the Change of Control;
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 46.4. The Customer may terminate the Contract with immediate effect by notice in writing to the MSP where:
- 46.4.1. the MSP are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Services;
  - 46.4.2. the MSP and its Staff employed in connection with the Services have failed to comply with the relevant Law governing the delivery of Services.

#### **Termination on Default – Minor Defaults**

- 46.5. Where the MSP commits a Minor Default of the Contract, the Customer shall be entitled to issue the MSP with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Default and give the MSP a minimum of ten (10) Working Days to remedy the Minor Default.
- 46.6. If the MSP commits three (3) Minor Defaults in a twelve (12) Month rolling period, this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 46.7.3.

#### **Termination on Default – Material Default**

- 46.7. The Customer may terminate the Contract by serving written notice on the MSP with effect from the date specified in such notice, where the MSP commits a Material Default and:
  - 46.7.1. the MSP has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer,

after issue of a written notice specifying the Material Default and requesting it to be remedied;

- 46.7.2. the Material Default is not, in the reasonable opinion of the Customer, capable of remedy;
  - 46.7.3. if the MSP has committed three (3) or more Minor Defaults within a twelve (12) Month rolling period;
  - 46.7.4. where any Contracting Authority terminates a Call-Off Contract awarded to the MSP under this Contract as a consequence of a default by the MSP;
  - 46.7.5. if the MSP has been suspended in accordance with Clause 45 and the outcome following such suspension shows the MSP to be at fault, to have provided Services not to the required specification or that the MSP has acted in breach of this Contract and/or the Framework Agreement;
  - 46.7.6. any of the provisions in Regulation 73 (1) of the Regulations apply.
- 46.8. The MSP may terminate the Contract by serving written notice on the Customer with effect from the date specified in such notice, where the Customer commits a Material Default and:
- 46.8.1. the Customer has not remedied the Material Default to the satisfaction of the MSP within twenty (20) Working Days, or such other period as may be specified by the MSP, after issue of a written notice specifying the Material Default and requesting it to be remedied;
  - 46.8.2. the Material Default is not, in the reasonable opinion of the MSP, capable of remedy.
- 46.9. If the Customer fails to pay the MSP undisputed sums of money when due, the MSP shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the MSP may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 21.

#### **47. BREAK**

- 47.1. The Customer shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the MSP.

#### **48. FRAMEWORK AGREEMENT**

- 48.1. The Customer may terminate the Contract by giving written notice to the MSP with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

#### **49. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 49.1. Where the Customer terminates the Contract under Clause 46 and then makes other arrangements for the supply of Services, the Customer may recover from the MSP the cost (subject to Clause 41.3) reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 46, no further payments shall be payable by the Customer to the MSP until the Customer has established the final cost of making those other arrangements.
- 49.2. Where the Customer terminates the Contract under Clause 47, the Customer shall indemnify the MSP against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the MSP by reason of the termination of the Contract, provided that

the MSP takes all reasonable steps to mitigate such loss. Where the MSP holds insurance, the MSP shall reduce its unavoidable costs by any insurance sums available. The MSP shall submit a fully itemised and valued list of such loss, with supporting evidence, of losses reasonably and actually incurred by the MSP as a result of termination under Clause 47.

49.3. The Customer shall not be liable under Clause 49.2 to pay any sum which:

49.3.1. was claimable under insurance held by the MSP, and the MSP has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

49.3.2. when added to any sums paid or due to the MSP under the Contract, exceeds the total sum that would have been payable to the MSP if the Contract had not been terminated prior to the expiry of the Contract Period.

49.4. Save as otherwise expressly provided in the Contract:

49.4.1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to 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

49.4.2. within thirty (30) Working Days of the date of termination or expiry of the Contract, the MSP shall return to the Customer any data and Confidential Information belonging to the Customer that is in the MSP's possession, power or control, either in its then current format or in a format nominated by Customer, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

49.4.3. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the MSP under Clauses 19 (Payment and VAT), 21 (Recovery of Sums Due), 22 (Prevention of Bribery and Corruption), 27 (Data Protection Act), 28 (Freedom of Information), **Error! Reference source not found.** (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 29 (Confidential Information), 32 (Intellectual Property Rights), 33 (Records and Audit Access), 39 (Cumulative Remedies), 41 (Liability, Indemnity and Insurance), 42 (Professional Indemnity), 49 (Consequences of Expiry or Termination), 51 (Recovery upon Termination) and 53 (Governing Law).

## 50. DISRUPTION

50.1. The MSP shall take reasonable care 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.

50.2. The MSP shall immediately inform the Customer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

50.3. In the event of industrial action by the Staff, the MSP shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

50.4. If the MSP's proposals referred to in Clause 50.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.

- 50.5. If the MSP 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 MSP as a direct result of such disruption.

## **51. RECOVERY UPON TERMINATION**

- 51.1. On the termination of the Contract for any reason, the MSP shall:

- 51.1.1. immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPR's and the Project Specific IPR's in its possession or in the possession or under the control of any permitted managed service providers, Consultants/Professionals or Consultancy Organisation, which was obtained or produced in the course of providing the Services;
- 51.1.2. immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the MSP under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear).
- 51.2. If the MSP fails to comply with Clause 51.1 the Customer may recover possession thereof and the MSP grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the MSP or its Consultants/Professionals where any such items may be held.
- 51.3. Where the end of the Contract Period arises due to the MSP's Default, the MSP shall provide all assistance under Clause 51.1 free of charge. Otherwise, the Customer shall pay the MSP's reasonable costs of providing the assistance and the MSP shall take all reasonable steps to mitigate such costs.
- 51.4. At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 32 shall automatically terminate without the need to serve notice.

## **52. FORCE MAJEURE**

- 52.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 52.2. Any failure or delay by the MSP in performing its obligations under the Contract which results from any failure or delay by an agent, Consultant/Professional or Consultancy Organisation shall be regarded as due to Force Majeure only if that agent, Consultant/Professional or Consultancy Organisation is itself impeded by Force Majeure from complying with an obligation to the MSP.
- 52.3. If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 52.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 52.4. It is expressly agreed that any failure by the MSP to perform or any delay by the MSP in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the MSP shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract,

supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

- 52.5. For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **DISPUTES AND LAW**

### **53. GOVERNING LAW**

- 53.1. The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.
- 53.2. This Contract is binding on the Customer and its successors and assignees and the MSP and the MSP's successors and permitted assignees.

### **54. TUPE**

- 54.1. During the period of six (6) Months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the MSP stops trading, and within twenty (20) Working Days of being so requested by the Customer, the MSP shall fully and accurately disclose to the Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Services under the Contract, in particular but not necessarily restricted to, the following:
- 54.1.1. the total number of Staff whose employment with the MSP is liable to be terminated at the expiry of the Contract but for any operation of Law;
  - 54.1.2. for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);
  - 54.1.3. full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;
  - 54.1.4. details of pensions entitlements, if any; and
  - 54.1.5. job titles of the members of Staff affected and the qualifications required for each position.
- 54.2. The MSP shall permit the Customer to use the information for the purposes of TUPE and of re-tendering. The MSP will co-operate with the re-tendering of the Service by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.
- 54.3. Subject to Clause 41.3, the MSP agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 54.
- 54.4. In the event that the information provided by the MSP in accordance with Clause 54.1 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the MSP becoming aware that the information originally given was inaccurate, the MSP shall notify the Customer of the inaccuracies and provide the amended information.

54.5. The provisions of this Clause 54 shall apply during the continuance of the Contract and indefinitely after its termination.

## 55. DISPUTE RESOLUTION

55.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

55.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

55.3. If the dispute cannot be resolved by the Parties pursuant to Clause 66.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 55.5 unless:

55.3.1. the Customer considers that the dispute is not suitable for resolution by mediation; or

55.3.2. the MSP does not agree to mediation.

55.4. The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the MSP and the Staff shall comply fully with the requirements of the Contract at all times.

55.5. The procedure for mediation and consequential provisions relating to mediation are as follows:

55.5.1. A neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within then (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to suitable regulatory body to be appointed as agreed on a project by project basis – please refer to order form to appoint a Mediator;

55.5.2. The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;

55.5.3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

55.5.4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

55.5.5. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

55.5.6. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

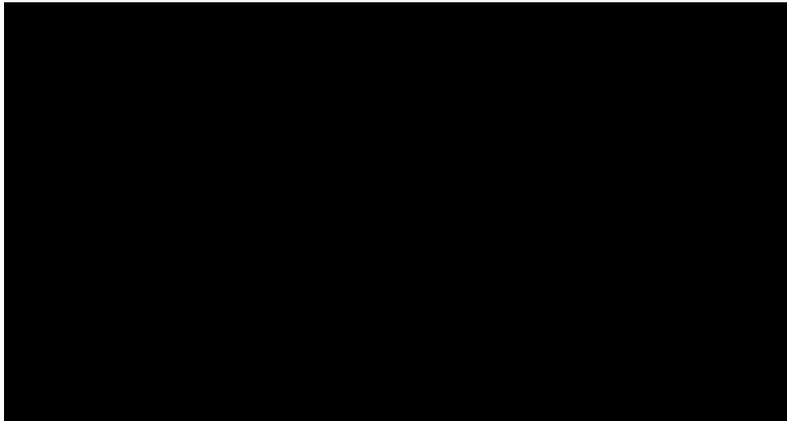


**SIGNED BY OR ON BEHALF OF THE PARTIES**

**For and on behalf of Contracting Authority:**



**For and on behalf of the MSP: (Director/Company Secretary)**



### ORDER FORM COVER SHEET

This Order Form is labelled as and referred to in the Call-Off Terms and Conditions as Appendix 1. The Call-Off Terms and Conditions, which gives rise to this Order Form. This Order Form sets out the specific terms and conditions for an individual Project / Statement of Work.

The layout of this Order Form has been designed to improve visibility and clarity of the contracting process, retaining key components of Appendix 1 of the Call-Off Terms and Conditions which have been listed below for reference.

Order Form	Corresponding Clauses Call-Off Terms and Conditions	Explanation
1. Term and Duration	Clause 2	Insert dates as directed.
2. Services	Clauses 12	Insert information as directed.
3. Security and Vetting	Clause 13.2.7	Specific Customer requirements to be inserted as directed.
4. Amendments and Variations	Appendix 3 Clause 12.6 to Clause 12.9 Clause 36	This section incorporates the variations and/or supplements to the Call -off Contract as provided for in Appendix 3 of the Call-Off Terms and Conditions. This inclusion in the Order Form eliminates the need for a separate appendix to this Order Form.  These amendments are included in this Order Form at the time of signing the Order Form.
5. Milestone Provisions	Clause 13.2.15 Appendix 2	This section incorporates the Prices for Services information that is required in terms of Appendix 2 of the Call-Off Terms and Conditions. This inclusion in the Order Form eliminates the need for a separate appendix to this Order. Insert payment, funding and milestones as directed.
6. Details of Permitted Processing	Clause 27 Appendix 5	This section incorporates the Data Protection Information required in relation to Appendix 5 to the Call-Off Terms and Conditions. This inclusion in the Order Form eliminates the need for a separate appendix to this Order Form. Complete the Table as directed.
7.	Clause 29	Customer to identify the information and insert such information as directed.

Confidential Information		
8. Construction Projects	NA	This has been inserted to ensure compliance with the provisions of the HGCR Act relating to payment and adjudication.
Addendum 1 Variation Form	Appendix 4	Changes to both the Call-Off Terms and Conditions and/ or the Order Form that are agreed post the execution of this Order Form will need to be set out in this Variation Form Appendix 1.

**ORDER FORM****(Appendix 1 of the Call-Off Terms and Conditions)****FRAMEWORK AGREEMENT (001141)****Customer Name** *The UK Health Security Agency***C+ Practice Name** *Services Procurement***Project Title:** *002 Delivering a Successful Pay Flexibility Business Case by MCR continued***Order Form Number:** *002***FROM:**

<b>Customer Name:</b>	The UK Health Security Agency
<b>Customer Address:</b>	UK Health Security Agency 5th floor 10 South Colonnade London E14 4PU
<b>Invoice Address:</b>	██████████ Accounts Payable; UK Health Security Agency, Manor Farm Road, Porton Down, Salisbury, SP4 0JG UKHSA VAT No: GB888851648
<b>Key Contact for Customer:</b>	Name: ██████████ Job Title: Pay and Reward Lead Email: ██████████

**TO:**

<b>MSP Name:</b>	<b>Reed Talent Solutions Limited (trading as Consultancy+)</b>
<b>MSP Address:</b>	Academy Court 94 Chancery Lane London WC2A 1DT Company Registration Number: 11875450
<b>MSP Delivery Team: (Names &amp; Contact Details)</b>	REF: Name: ██████████, Customer Success Manager Phone: ██████████ E-Mail: ██████████

1.	1. TERM <i>Clause 2 (Initial Contract Period) of the Call-Off Terms and Conditions</i>	
1.1	<b>Effective Date:</b>	The Commencement Date of this Order Form is <b>01/10/2025</b> which is the date on which the supply of goods/services commenced.
1.2	<b>Expiry Date:</b>	The Expiry Date of this Order Form is 31/03/2026 which is the date upon which the supply of services/good has ended.
1.3	<b>Contract Date:</b>	The Contract Date of this Order Form is the date on which the Order Form is the date of the last signature of the parties.
1.4	<b>Initial Contract Term:</b>	Subject to Clause 2.1 (Initial Contract Term) of the YPO Call Off Terms & Conditions, the Parties agree that the terms and conditions of this Customer Order Form shall take effect from the Commencement Date stated herein.
1.5	<b>YPO Variation</b>	<b>Notice to the Customers who signed the YPO Call Off Terms &amp; Conditions Prior February 2025:</b> YPO issued a variation to the Call Off Terms and Conditions in February 2025. The varied clauses are as set out in Addendum 2 below. Please be aware that these clauses have legal effect and supersede previously stated clauses on the same subject matter, including those varied in accordance with Appendix 3 (Amendments and Variations).

2.	<p style="text-align: center;"><b>SERVICES</b></p> <p style="text-align: center;"><i>Clause 12 (Supply of the Services) of the Call-Off Terms and Conditions</i> <i>The MSP shall ensure that they meet or exceed the below Service Levels:</i></p>						
2.1	<p><b>Overview of Service to be provided:</b></p> <p>The ability of UKHSA to recruit and retain talented, skilled, and experienced staff members is fundamental to its success.</p> <p>UKHSA intends to submit a pay flexibility business case to HM Treasury and Cabinet Office, to address recruitment and retention issues across the organisation and particularly in scientific and clinical roles.</p> <p>Set of deliverables set out below:</p> <table border="1" data-bbox="217 703 1426 1473"><tr><td data-bbox="217 703 325 958">[Redacted]</td><td data-bbox="325 703 1426 958">[Redacted]</td></tr><tr><td data-bbox="217 958 325 1281">[Redacted]</td><td data-bbox="325 958 1426 1281">[Redacted]</td></tr><tr><td data-bbox="217 1281 325 1473">[Redacted]</td><td data-bbox="325 1281 1426 1473">[Redacted]</td></tr></table>	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]						
[Redacted]	[Redacted]						
[Redacted]	[Redacted]						



2.5	<p><b>Roles and responsibilities of the Customer including contact details:</b></p> <p>To provide all the necessary information to Consulting Organisation.</p> <p>To link the consulting organisation with relevant UKHSA stakeholders; to provide an overview of the project plan; to be available to review/provide steers as required. [REDACTED]</p>
2.6	<p><b>Roles and responsibilities of the Consulting Organisation/ Consultant Professional:</b></p> <p>Delivery of services outlined in 2.1 and 2.2.</p>
2.7	<p><b>Project/implementation plan:</b></p> <p>Not required.</p>

2.8	DEPENDENCIES	
2.8.1	As part of this Statement of Work, assumptions and dependencies have been identified. The Customer should ensure that these are understood and correct as they may impact the timeline and cost of the SoW once delivery has commenced.	
ID	Dependency	Impact & Proposed Actions
■	[REDACTED]	[REDACTED]
2.9	ASSUMPTIONS	
ID	Assumption	Impact & Proposed Actions
■	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]



<b>4.</b>	<p><b>4. AMENDMENTS TO THE CALL-OFF TERMS AND CONDITIONS</b></p> <p><i>APPENDIX 3 of the Call-Off Terms and Conditions</i></p> <p><i>Clause 7.4 (Order of Precedence) of the Call Off Terms and Conditions,</i></p> <p><i>The Parties hereby agree to the following amendments of the Call-Off Terms and Conditions:</i></p>	
<b>4.1</b>	<p><b>LIABILITY, INDEMNITY AND INSURANCE</b></p> <p>Clause 41 has been amended as follows</p>	
	41.3.	Subject always to Clause 41.4 and Clause 41.5, the liability of either Party for defaults shall be subject to the following financial limits:
	41.3.1.	the aggregate liability of either Party (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) for all defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed 125% of the Project/Statement of Work Price and,
	41.3.2.	the annual aggregate liability under the Contract of either Party (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) for all other defaults shall in no event exceed the greater of 125% of the Project/Statement of Work Price payable by the Customer to the MSP in the Year in which the liability arises

<b>5.</b>	<p><b>5. MILESTONE PROVISIONS</b></p> <p><i>Clause 18 Project/Statement of Work Price of the Call-Off Terms and Conditions</i></p> <p><i>Clause 19 Payment of the Call-Off Terms and Conditions</i></p> <p><i>Appendix 2 of the Call-Off Terms and Conditions</i></p>	
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<b>5.1</b>	<b>6. PROJECT/STATEMENT OF WORK PRICE</b>	
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<b>5.1.1</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td style="text-align: center;"><i>MSP Fee</i></td> <td style="text-align: center;">Project Value (£)</td> <td style="text-align: center;">MSP Fee (£)</td> <td style="text-align: center;">Total (£)</td> </tr> <tr> <td style="text-align: center;">█</td> <td style="text-align: center;">█</td> <td style="text-align: center;">█</td> <td style="text-align: center;">█</td> </tr> <tr> <td style="text-align: center;"><b>Total</b></td> <td></td> <td></td> <td style="text-align: right;"><b>£39,198.02</b></td> </tr> </table>								<i>MSP Fee</i>	Project Value (£)	MSP Fee (£)	Total (£)	█	█	█	█	<b>Total</b>			<b>£39,198.02</b>
<i>MSP Fee</i>	Project Value (£)	MSP Fee (£)	Total (£)																	
█	█	█	█																	
<b>Total</b>			<b>£39,198.02</b>																	

<b>5.1.2</b>	Any other pre-approved demonstrable additional costs or expenses the MSP may incur to enable it to provide the Services.
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<b>5.2</b>	<b>FUNDING</b>	The Customer shall provide the details of any funding arrangements (if any) below: Not required.
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<b>5.3</b>	<b>PAYMENT</b>	
Clause 13.2.16 has been amended to include the insertion of clause 13.2.16(a) to (d) as set out below.		
<b>FOR ZIVIO PAYMENTS</b>		
(a)	Where there is a dispute concerning the correct fees, the Customer shall ensure it informs the MSP within seven (7) days of the receipt of the Approval for Payment Notice and the Customer is here reminded that it is its obligation to ensure that the correct amount of the fees are approved, as once approval is confirmed, the MSP will not be liable for any mistakes in the amount approved or any delay in paying the Supplier including any overpayment as a result, and;	N/A
(b)	Delays in payment or any overpayment of the Supplier due to the foregoing circumstances shall in no event constitute a Material Default by the MSP or trigger a breach of contract or require the MSP to indemnify and hold harmless YPO or the Customer as a result of any failure by the MSP to pay any such invoices or taxation.	N/A
<b>5.4</b>	<b>INVOICING ARRANGEMENTS</b>	
	FOR ZIVIO PAYMENTS	FOR XMS PAYMENT
<b>5.4.1</b>	The Customer shall within seven (7) days of the receipt of an Approval for Payment Notice from the MSP, review and approve the request for payment.	N/A
<b>5.4.2</b>	NOT USED	N/A
<b>5.4.3</b>	Where the Customer delays approving a request for payment in accordance with section 5.4.1 above, the MSP in order to meet its obligation under clause 13.2.16 shall issue payment to the Consultant Professional or the Consultancy Organisation upon the expiration of the seven (7) days' Notice and the Customer here agrees to reimburse the MSP the sum paid to the Consultant Professional or the Consultancy Organisation including the MSP fee as stated on the invoice generated by Zivio in a timely manner.	N/A
<b>5.4.4</b>	NOT USED	N/A
<b>5.4.5</b>	NOT USED	N/A
<b>5.4.6</b>	NOT USED	N/A

<b>5.5</b>	<b>PURCHASE ORDER REFERENCE</b>
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**Purchase Order Number:** TBC for Phase 2

<b>6</b>	<p><b>APPENDIX 5</b></p> <p><b>DETAILS OF PERMITTED PROCESSING</b></p> <p><i>Additional text agreed for inclusion at beginning of Section 6 referring to storage of UKHSA data: "No MCR consultants will store UKHSA data on hard drives, mobile devices, or any removable media."</i></p> <p>Clause 27 of the Call-Off Terms and Conditions</p>
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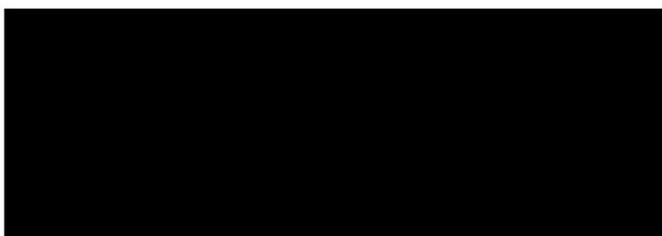
6.1	Subject to Clause 27 Protection of Information (Data Protection) of the Call-Off Terms and Conditions the parties agree to following:
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[REDACTED]	[REDACTED]	[REDACTED]


<b>7. CONFIDENTIAL INFORMATION</b>		
<b>7.</b>	<i>Clause 29 of the Call-Off Terms and Conditions</i>	
7.1	Information that shall be deemed Commercially Sensitive Information or Confidential Information is as set out in the table below.	
7.2		
8.	<b>CONSTRUCTION PROJECTS – Not applicable.</b>	
<b>8.</b>	To the extent that this Project / Order Form is deemed to be a Construction Contract within the meaning set out in section 104 of Housing Grants, Construction and Regeneration (HGCR) Act 1996, the Parties shall comply with the provisions of the HGCR Act relating to payment and adjudication.	
8.1	Due Date	The Due Date for approval shall be seven (7) days after the submission of an invoice by Consultancy Organisation.
8.2	Final Date	The Final Date for approval / rejection shall be fourteen (14) days after submission of an invoice from Consultancy Organisation in order to allow MSP to issue a payless notice on the 14th day.

**BY SIGNING AND RETURNING THIS ORDER FORM THE MSP AGREES** to enter a legally binding contract with the Customer to provide to the Customer the Services specified in this Order Form (together with where completed and applicable, the mini-competition order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the MSP and YPO on [21/07/2023].

**For and on behalf of the Customer:**





**For and on behalf of the MSP:**





1.3	<p><b>Example 3: FEES</b></p> <p><i>The Customer has agreed to increase the fees for the delivery of the Services from [£XXXX] to [£XXXX], effective from [XX/XX/20XX]</i></p>
1.4	<p><b>Example 4: CHANGE IN MILESTONES</b></p> <p><i>The Customer has agreed a change in Milestones as set out below:</i></p>

2.	Words and expressions in this Variation Form shall have the meanings given to them in the Call-Off Terms and Conditions.
3.	All other terms not expressly amended or modified by this Variation Form shall remain unaffected and shall continue in full force and effect and should a conflict arise between the terms of this Variation Form and the Call-Off Terms and Conditions, the terms of this Variation Form shall take precedence.
4.	This Variation Form has been entered into on the date stated at the beginning of it, which is the date of the last signature of the parties who are duly authorised to bind their respective legal entities to the terms of this Variation Form.

Authorised to sign for and on behalf of the Customer:	
Signature	
Date	
Name in capitals	
Position / Title	
Authorised to sign for and on behalf of the MSP:	
Signature	
Date	

Name in capitals	
Position / Title	

SAMPLE

**ADDENDUM 2**

**YPO CALL OFF TERMS AND CONDITIONS  
VARIATION**

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**ANNEX A**

**FRAMEWORK AGREEMENT VARIATION**

**SERVICES FRAMEWORK AGREEMENT FOR MANAGING CONSULTANCY & PROFESSIONAL SERVICES**

**Framework Reference No: 001141**

**Variation Form No: 001**

**BETWEEN:**

**YPO** whose principal place of business is at 41 Industrial Park, Kenmore Road, Wakefield, WF2 0XE ("**YPO**")

**AND**

**REED SPECIALIST RECRUITMENT LIMITED** (CRN: 06903140) whose registered address is at Academy Court, 94 Chancery Lane, London, WC2A 1DT (the "**MSP**")

- 1. The Agreement is varied as follows:

Amend definition of "Confidential Information" at Schedule 7, Clause 1 to the following:

<b>"Confidential Information"</b>	<p>means:-</p> <ul style="list-style-type: none"> <li>(a) 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 information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party;</li> <li>(b) the Commercially Sensitive Information; and</li> <li>(c) all communications (whether by email and/or letter), documentation, recordings, diagrams, databases, and any other relevant information shared or produced in connection with the Services between the MSP, its Staff, and the Customer</li> </ul> <p>and does not include any information: -</p> <ul style="list-style-type: none"> <li>(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 29);</li> <li>(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li> <li>(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>(iv) is independently developed without access to the Confidential Information</li> </ul>
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Insert new definition of "Excluded Advice" at Schedule 7, Clause 1 as follows:-

<b>"Excluded Advice"</b>	means advice relating to regulated sectors or activities, such as legal, financial or compliance advice
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Insert new clause at Schedule 7, Clause 14.5 as follows:-

"14.5 Where the Customer cannot for security or regulatory constraints disclose to the MSP and/or the Consultant/Professional or Consultancy Organisation, the full details of the Services to be delivered, the MSP's obligations and any subsequent liability shall be limited to the extent of matters disclosed by the Customer in the Order Form."

Insert new clause at Schedule 7, Clause 15.2.2 as follows:-

"15.2.2 the Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form. It is the role of the Customer to confirm whether the specifications have been met as the initiator and receiver of the Services."

Amend Schedule 7, Clause 22.4 to the following:-

"22.4 Certification (if requested) will be provided by the MSP within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Contract Period. The MSP will provide any evidence of compliance as may be reasonably requested by the Customer."

Amend Schedule 7, Clause 32.3 to the following:-

"32.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The MSP hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so. The Parties agree that:

32.3.1 the Customer and the Consultant/Professional or the Consultancy Organisation shall prior to the Commencement Date agreed and record the details of any Pre-Existing IPR of the Consultant/Professional or the Consultancy Organisation or third-party IPR that will be embedded in the Project Specific IPR in writing and such agreement shall be attached as an addendum to the Order Form."

Insert new clause at Schedule 7, Clause 41.14 as follows:-

"41.14 Where the Customer accepts the delivery of any part of the Services prior to entering into an agreement with the MSP through a signed Order Form, the MSP shall not be liable for any acts or omissions of the Consultant/Professional or Consultancy Organisation and in no event shall liability be applied to the MSP retrospectively."

Insert new clause at Schedule 7, Clause 41.15 as follows:-

"41.15 The MSP is prevented by the Framework Agreement from providing Excluded Advice. For the avoidance of doubt, the Excluded Advice relates to advice that is outside the scope of the Services (and Deliverables) being delivered in accordance with the Order Form."

Insert new clause at Schedule 7, Clause 41.16 as follows:-

"41.16 The Customer further acknowledges that where the Consultant/Professional or Consultancy Organisation provides comments, opinions, or purported advice that falls under Excluded Advice during the course of providing the Services to the Customer, the Customer shall not rely on such Excluded

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Advice. The MSP strongly advises the Customer to consult its own professional advisors before relying on any Excluded Advice received. The Customer also accepts that the MSP not being a party to these conversations, shall not be liable for any damages suffered by the Customer as a result.\*

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

**Authorised to sign for and on behalf of YPO**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Name in Capitals \_\_\_\_\_

Address \_\_\_\_\_

---

**Authorised to sign for and on behalf of the MSP**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Name in Capitals \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

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**ADDENDUM 1 OF THIS ORDER FORM – example only**

**VARIATION FORM**

**(Appendix 4 of Call-Off Terms and Conditions)**

**CALL-OFF TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES**

<b>Customer Name</b> [INSERT]	
<b>C+ Practice Name</b> [INSERT]	
<b>Project Title</b> [INSERT]	
<b>Order Form Number:</b> [INSERT]	

**BETWEEN**

[ ] (“the Customer”)

and

**Reed Talent Solutions Limited** (trading as **Consultancy+**) incorporated and registered in England and Wales with company number 11875450 whose registered office is at Academy Court, 94 Chancery Lane, London, WC2A 1DT (**REED**) (“the MSP”)

1.	Further to the signed Call-Off Terms and Conditions executed on [INSERT] and the Order Form executed on: [INSERT] the parties agree the following variation(s):
<b>PLEASE NOTE THAT THE VARIATIONS BELOW ARE JUST FOR EXAMPLE AND YOU WILL BE REQUIRED TO DELETE THE SECTIONS WHICH ARE NOT APPLICABLE.</b>	
1.1	<p><b>Example 1: TERMINATION</b></p> <p><i>Mr Joe Bloggs of [COMPANY NAME] (the Supplier) will no longer be delivering (or supporting the delivery) of the Services to the Client from [DATE].</i></p> <ol style="list-style-type: none"> <li>1. Termination Effective From:</li> <li>2. Notice Period:</li> <li>3. End Date:</li> <li>4. Any Payments Due</li> </ol>
1.2	<p><b>Example 2: EXTENSION</b></p> <p><i>The Customer has agreed to extend Mr Joe Bloggs’ (the Consultant Professional/Consultant Company) Term by three (3) months and the new end date will be 31/04/[XXXX] (Expiry Date)</i></p>
1.3	<p><b>Example 3: FEES</b></p>

	<i>The Customer has agreed to increase the fees for the delivery of the Services from [£XXXX] to [£XXXX], effective from [XX/XX/20XX]</i>
1.4	<b>Example 4: CHANGE IN MILESTONES</b>  <i>The Customer has agreed a change in Milestones as set out below:</i>

2.	Words and expressions in this Variation Form shall have the meanings given to them in the Call-Off Terms and Conditions.
3.	All other terms not expressly amended or modified by this Variation Form shall remain unaffected and shall continue in full force and effect and should a conflict arise between the terms of this Variation Form and the Call-Off Terms and Conditions, the terms of this Variation Form shall take precedence.
4.	This Variation Form has been entered into on the date stated at the beginning of it, which is the date of the last signature of the parties who are duly authorised to bind their respective legal entities to the terms of this Variation Form.

Authorised to sign for and on behalf of the Customer:	
Signature	
Date	
Name in capitals	
Position / Title	
Authorised to sign for and on behalf of the MSP:	
Signature	
Date	
Name in capitals	
Position / Title	