ESPO reference 3S_18

Strategic HR Services

FURTHER COMPETITION

INVITATION TO TENDER

(Part A)

Closing date for submission of Tender

01 March 2019 (2:00pm)

PLEASE SUBMIT YOUR COMPLETED TENDER SUBMISSION – ITT PART B – IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED
This document is in two parts:

**PART A**

Part A is the Invitation to Tender and provides all the background information, a description of what is required, and an overview and instructions for the completion and submission of the Tender document. Note: Part A does not need to be returned to DWP.

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**ITT PART B**

ITT Part B is the Tender submission document and this should be completed in full and uploaded onto the DWP e-tendering portal in advance of the deadline, in accordance with the instructions given (see Section 5, Instructions for Completing and Submitting a Tender).
GLOSSARY OF KEY TERMS
A detailed description of the requirement, together with formal definitions of the most important terms and phrases, are given in the rest of the document. For Tenderers’ convenience however, the following key terms, which are used throughout this document, are defined as follows:

**Contract**
means this Contract let by DWP under ESPO’s Strategic HR Services Framework (ref: 3S_18).

**CTS**
means Career Transition Service.

**DWP**
means the Department for Work and Pensions (being the public body which has opted to use the Framework to select and appoint a Service Provider to supply services).

**ESPO**
means the Eastern Shires Purchasing Organisation.

**Framework**
means the Framework arrangements established by ESPO for the provision of strategic HR services to Customers by the Framework Service Providers.

**Framework Agreement**
means the over-arching agreement number 3S_18 for strategic HR services between ESPO and the Service Provider, setting out the general terms and conditions which will apply to all contracts (including this one) let under the Framework Agreement.

**Framework Service Provider(s)**
means a Service Provider appointed onto the Framework for the provision of strategic HR services.

**Further Competition**
means this exercise to reopen competition under the Framework, intended to secure formal quotations from the Framework Service Providers tailored to suit DWP’s specific requirements.

**Invitation to Tender**
means this document, inviting Tenderers to submit a Tender.

**Service Provider**
means the Service Provider appointed by DWP as a result of this further competition under the Framework.

**Services**
means the requirements of DWP for the Services from time to time as detailed in Section 2 of this document, Requirement (including Specification).

**Tender**
means the Tender submitted by the Service Provider to DWP.

**Tenderer**
means an organisation that submits a completed Tender in response to this Invitation to Tender.
1. INTRODUCTION

This is an Invitation to Tender with information, instructions and guidance provided in ITT Part A, which, following consideration by the Tenderer, the Tender submission (ITT Part B) should be completed and uploaded onto the DWP e-tendering portal by all service providers who wish to tender for the requirement described in the following pages.

Overview

Background to DWP

The DWP is the UK Government Department responsible for welfare, pensions and child maintenance policy and delivery. As the UK’s biggest public service Department, it administers the state pension and a range of working age, disability and ill health benefits to over 22 million claimants and customers. DWP is a ministerial Department, supported by 13 agencies and public bodies.

DWP’s remit includes the provision of welfare to work and social security benefits to individuals with health conditions and disabilities and those over working age. The Department has over 80,000 employees to deliver £165bn of payments annually, comprising of pensions, welfare to work and social security benefits.

For more information on the work and overall objectives of the Department, please view the DWP single Departmental plan, published at:

DWP Single Departmental Plan

Background to the requirement

DWP is issuing this Invitation to Tender as a further competition under Lot 6 – Outplacement & Career Transition Services of ESPO’s Strategic HR Services Framework (reference 3S_18).

The DWP requirement is for a Service Provider to carry out a range of Career Transition activities.

Objectives

The objectives of the procurement are:

- To secure a quality service at the most economically advantageous price for the Services, meeting the Requirement (including Specification) detailed in Section 2 of this ITT Part A.

Duration

The Contract will be established for either 3 years or an initial period of 2 years with an option to extend for a further period or periods up to a total of 1 year taking the Contract term to a maximum of 3 years, depending on the outcome of the evaluation. The Contract is intended to start on 3 April 2019 or as otherwise agreed.

Volumes

The DWP does not bind itself to a specific volume of business under this Contract.

Current forecasts indicate that up to 2,000 employees could potentially access the CTS during the period 2019 to 2021.
**Contract Management**

The Contract will be managed by DWP, with review meetings being held on a quarterly basis at DWP premises. The review meetings will enable DWP and the Service Provider to review performance of the Contract, discussing matters which may include but not be limited to:

- Contract delivery and Performance;
- Service Levels and any exceptions;
- Forecasts relating to future uptake of the CTS across DWP
- Feedback from key stakeholders;
- Discussion regarding any complaints of poor performance and agreement of actions to address;
- Consideration of any improvements or developments;
- Any changes in key personnel, processes, or delivery;

The Service Provider will be expected to field their Account Manager to attend review meetings.

**Customer Service:**

The Service Provider will provide a named Account Manager for the service and a customer service team to act as a first point of contact to resolve any booking, delivery or quality issues.

The Service Provider is required to maintain contact with the DWP Primary Contact via email, telephone and face-to-face channels; providing assurance on progress and discussing emerging issues. During periods of formal redundancy consultation, this shall be done as a minimum on a monthly basis. However, there may be occasions when the frequency will need to change. In other periods, the DWP and the Service Provider will agree the frequency of meetings according to the numbers of employees accessing the service.

The Service Provider will provide administrative support for the CTS, for example booking the events / resources for the employee, providing booking confirmation and the provision of monthly invoices.

**Management Information**

The Service Provider shall supply Management information on a monthly basis relative to all activity undertaken by the Service Provider as requested by DWP.

Management Information will be presented in a format which can be exported into MS Office Applications. The Service Provider will provide Management Information to DWP within 8 working days of the month end and at no additional cost to DWP.

The management information will consist of:

- DWP employees by name and location who have registered for the service;
- Names of people and events / resources provided during the month;
- Cost of events/resources delivered during the month;
- Summary of complaints and their resolution.
## Service Levels and Service Credits

<table>
<thead>
<tr>
<th>Service Level</th>
<th>Measure</th>
<th>Description</th>
<th>Minimum Performance</th>
<th>Service credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Engagement</td>
<td>At least 95% of employees who want to access the CTS will be contacted to discuss their options within 2 working days from the commencement of the notification of redundancy</td>
<td>95%</td>
<td>0.5%</td>
</tr>
<tr>
<td>2</td>
<td>Cancellation of Events</td>
<td>The Service Provider will provide at least one working days’ notice to the DWP employee and the DWP Primary Contact of the cancellation of an event.</td>
<td>99%</td>
<td>0.5%</td>
</tr>
<tr>
<td>3</td>
<td>Cancellation of Events</td>
<td>Number of events cancelled in a month by the Service Provider, to be no more than 1 per calendar month. This does not include occasions where an event is cancelled due to less than 6 employees due to attend.</td>
<td>&gt;1</td>
<td>0.5%</td>
</tr>
<tr>
<td>4</td>
<td>Complaints</td>
<td>Complaints relating to CTS raised by DWP employees will be acknowledged within 24 hours and a satisfactory response provided within 10 working days. Details of the complaint and resolution should be provided with the monthly Management Information.</td>
<td>99%</td>
<td>0.5%</td>
</tr>
<tr>
<td>5</td>
<td>Provision of Management Information</td>
<td>The Service Provider will provide DWP with accurate monthly Management Information by the 8&lt;sup&gt;th&lt;/sup&gt; working day of each calendar month detailing DWP employees by name and location who have registered for the service; Names of people and events / resources provided during the month; Cost of events/resources delivered during the month; Summary of complaints and their resolution.</td>
<td>&gt;8 working days</td>
<td>0.5%</td>
</tr>
<tr>
<td>6</td>
<td>Invoicing</td>
<td>The Service Provider will provide accurate monthly invoices by the 8&lt;sup&gt;th&lt;/sup&gt; working day of each calendar month.</td>
<td>&gt;8 working days</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

Each service credit relates to a specified percentage which is calculated against the overall service charge for the reporting period.
Key Milestones

The DWP requires the Service Provider to commit to facilitating the implementation of the new Contract ensuring no loss of service. The implementation phase will be at nil cost to DWP and invoices will only be accepted from Service commencement.

The DWP will provide the Service Provider with the names, contact details and locations of all employees who are entitled to access the service. Using that information, the Service Provider will make the initial contact with the employees to enable access to the service.

The Service Provider should note the following project milestones that DWP will measure the quality of implementation against:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Description</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Signature of the Contract</td>
<td>Within 2 weeks of the award of the Contract</td>
</tr>
<tr>
<td>4</td>
<td>Service Commencement</td>
<td>Within 2 weeks of the award of the Contract</td>
</tr>
</tbody>
</table>

Terms and Conditions:

The Service Provider is required to meet and adhere to all current or future legislation that may impact the services delivered within the Contract.

The Service Provider must also adhere to any requirements that are specified within this document and / or included as part of the tender process.

The Service Provider must adhere to DWP Security Protocols in relation to the use and protection of DWP official information and personal information of DWP employees.

If the Service Provider Offshores DWP information and DWP employee’s personal information, the protection of that information must adhere to DWP Security Protocols.

Collaboration:

The Service Provider is required to work collaboratively with existing and future DWP Suppliers in order to successfully deliver the Services required and facilitate any changes that take place either prior to, during or following the duration of the Contract.

Questions and Contact Details

All requests for clarification (whether in relation to this document, the requirement or the Tender submission document) should be submitted as soon as possible in writing by email (using reference 21968) to:

<table>
<thead>
<tr>
<th>Name</th>
<th>DWP Primary Contact</th>
<th>Secondary contact</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[Redacted – Section 40(2)]</td>
<td>[Redacted – Section 40(2)]</td>
</tr>
<tr>
<td>Position</td>
<td>[Redacted – Section 40(2)]</td>
<td>[Redacted – Section 40(2)]</td>
</tr>
<tr>
<td>Tel</td>
<td>[Redacted – Section 40(2)]</td>
<td>[Redacted – Section 40(2)]</td>
</tr>
<tr>
<td>Email</td>
<td>[Redacted – Section 40(2)]</td>
<td>[Redacted – Section 40(2)]</td>
</tr>
<tr>
<td>Address</td>
<td>[Redacted – Section 40(2)]</td>
<td>[Redacted – Section 40(2)]</td>
</tr>
</tbody>
</table>
A copy of all questions and answers raised will be maintained and distributed periodically to all recipients of the Invitation to Tender. If the Tenderer expresses that the question is confidential and DWP agree that it is then the response will be sent only to the Tenderer raising the question.

DWP will circulate a complete list of answers to all questions submitted by (up to and including) 22 February 2019.

Questions received after this date may not be answered.

If you do not wish to submit a Tender, please notify DWP by emailing [Redacted – Section 40(2)] and quoting the Tender reference number. Under no circumstances should you pass this document on to a third party.
2. REQUIREMENT (including Specification)

Background to the Requirement

DWP anticipates that as it works through restructuring, transformation and its future estates strategy, individual members of staff will face redundancy. Although it aims to redeploy as many people as possible, redundancy may be required as a last resort. For those facing redundancy DWP wants to offer them high-quality support to help their transition to a new career; inside the Civil Service, the wider public sector, private sector (in employment or self-employment), voluntary sector or retirement.

DWP is looking for a Service Provider with a proven track record of delivering tailored Career Transition support for individuals, demonstrating high quality, value for money interventions using modern media resources as well as face to face.

The Service Provider should have a business model that provides the ability to deliver an equality of service regardless of where the DWP employee is based.

The Service Provider should have a good understanding of Civil Service culture, helping employees to manage change. Essential to this requirement, the Service Provider should help to keep employees motivated as they prepare for potential redundancy and develop themselves for the future job market.

Only employees under notice of voluntary redundancy or identified at risk of compulsory redundancy, based throughout England, Scotland and Wales, are in scope for the CTS. The service is not open to employees in Northern Ireland or any of our Arms’ Length Bodies. As an exception to redundancy DWP would offer financial awareness workshops, only for those people who apply for and accept a voluntary exit scheme. Employees will be across all Civil Service grades: Senior Civil Service, Grades 6 and 7, Senior Executive Officer, Higher Executive Officer, Executive Officer, Administrative Officer and Administrative Assistant and will require support tailored to their needs depending on the stage of their career to date.

DWP requires employees to access the service on the basis of selection, according to their needs, from the menu of options outlined below, for example but not limited to:

- Designing and producing CV’s;
- Applying for jobs;
- Interview skills and support;
- Planning for retirement;
- Financial awareness;
- Starting up a self-employed business;
- Networking for success;
- Understanding head-hunting;
- Advice support (discussion - on-line/telephone);
- One-to-One career counselling / coaching sessions and advice lines;
- Virtual On-line Career Resource.

Employees will require access to the service during the notice period (normally 3 months for voluntary redundancy and 6 months for compulsory redundancy).

DWP requires all employees to have equal access to the CTS wherever they are located. The Service Provider must have access to an extensive network of accommodation within each DWP region of England, Scotland and Wales to facilitate this. This will include accommodation where people who live in more remote locations can access the service easily.

Where a cluster of employees require the same intervention in the same locality the Service Provider will deliver the service at a DWP location close to the DWP bases. Where this is required this will be considered on a case by case basis.
Subsequent to the commencement date of the Contract and the satisfactory conclusion of the implementation meeting(s); the Service Provider will have the ability to hold the first support event with eligible employees no later than 4 weeks after the start of the CTS. The Service Provider shall only carry out workshops where there are 6 to 12 employees. When less than 6 employees are due to attend a workshop the event should only proceed with the Service Provider and DWP’s prior agreement.

Workshops and counselling sessions will normally take place in or around the principle DWP sites affected within England, Scotland and Wales but there may be an occasional requirement to attend more remote locations. The Service Provider is required to arrange sessions in a way that maximises best value (e.g. reducing travel costs and time for DWP’s and the Service Provider’s employees).

The Service Provider shall ensure that advisers, counsellors and coaches are appropriately accredited and experienced. As a minimum Career Coaches should hold qualifications at NVQ IAG Level 4 equivalent and upwards. In particular, Counsellors must be accredited in career counselling (as opposed to just coaching). The Service Provider shall have procedures in place to ensure the ongoing assurance of Counsellors’ accreditation (e.g. arrangements for professional supervision, peer / third party reviews and observations).
DWP employees will want to explore and understand the options available to them and will want advice which guides them through the decision-making process and helps them understand the various options. The Service Provider shall make initial contact with each individual who is entitled to use the CTS, within 2 working days from the date the Service Provider is notified of the employee's details and engage them in a one to one discussion. Within the discussion the Service Provider shall advise the employee of the events and resources that are available through the CTS, how they will be delivered, for example face to face events, webinars, on line e-learning and the locations they will be delivered where applicable. The Service Provider will have the facilities to advise DWP employees of local vacancies by making direct contact with local employers, recruitment agencies and identify job opportunities that match their skills and experience. The Service Provider will also respond to ad hoc requests for support from individuals within 2 working days. Where possible a one-to-one relationship should be established and maintained between the person and the counsellor for the duration of the service to provide consistency. Individual confidentiality will be maintained at all times by the Service Provider.

Service Provision:

**Designing and Producing CV's**

This is a half day event. DWP anticipate that up to approximately 90% of employees that are at risk of redundancy at any given point and access the CTS will require this in depth event which will provide enough information to ensure employees understand both the general principles of CV writing and how to tailor their CVs to suit specific sectors (public, private and voluntary), and individual vacancies. For example: understanding what a CV needs to include, different CV formats, job sector expectations, tailoring CV's to specific job opportunities.

**Applying for jobs**

This is a half day event. DWP anticipate that up to approximately 90% of employees that are at risk of redundancy at any given point and access the CTS will require access to this event which will provide enough information to ensure employees understand the general principles of applying for jobs and have an overview of the different processes used by the public, private and voluntary sectors. They shall also require bespoke support in understanding specific requirements laid out in external public and / or private sector job adverts. It should include an overview of CV’s and covering letters for CV’s; managing the search for jobs, employer’s expectations in applications, how applications differ in different jobs / employers.

**Interview skills and support**

This is a half day event. DWP anticipate that up to approximately 90% of employees that are at risk of redundancy at any given point and access the CTS will require access to this event which will provide enough information to ensure employees understand interview processes – including practical experience. They shall also require bespoke support preparing for interviews that they have been offered. It should also include insight into common questions used at interviews, good practice for telephone / skype interviews.

**Planning for retirement**

This is a half day event. DWP anticipate that up to approximately 20% of employees that are at risk of redundancy at any given point and access the CTS will require access to this event which is aimed at people who are retiring. It should include perceptions of and planning retirement, health awareness, voluntary job roles – the skills and experience required, leisure and hobbies and managing relationships.

**Financial awareness**

This is a half day event. DWP anticipate that up to approximately 90% of employees that are at risk of redundancy at any given point and access the CTS shall require access to this event which will include: tax planning, pension decisions, replacing lost benefits, cash management, savings and investments.
Starting up a self-employed business

This is a half day event. DWP anticipate that up to approximately 30% of employees at risk of redundancy at any given point and access the CTS shall require access to this event which will provide enough information to ensure employees have a basic knowledge and signpost them to sources of advice and support and information on potential grants and enterprise funding opportunities for new businesses. This should include, is it the right move for you? What you need to do, being a consultant, marketing, drafting a business plan and how to launch a business.

Networking for success

This is a half day event. DWP anticipate that up to approximately 20% of employees at risk of redundancy at any given point and access the CTS shall require access to this event which will provide enough information to ensure employees understand social media, (including LinkedIn) for example how to research and gather information and how to build a profile.

Understanding head-hunting

This is a half day event. DWP anticipate that up to approximately 10% of employees who are at risk of redundancy at any given point and access the CTS shall require access to this event which will provide enough information to ensure employees understand how head-hunters operate and to be able to engage successfully with them (including attending events) and will be targeted at Senior Civil Servants, Grade 6 and Grade 7. This should include an overview of CV’s, selecting the best employers and / or agencies, good practices on maximising chances of employment, transferable skills and tailored expertise to the right job markets.

One-to-One career counselling / coaching sessions and advice lines

The Service Provider will design, develop and deliver one-to-one career counselling sessions which are to be delivered either face to face or by telephone, with the agreement of the DWP employee. These sessions shall offer bespoke support to employees including reviewing any feedback from job applications sifts and interviews.

Virtual On-line Career Resource

The Service Provider will offer signposting to a range of career resources and e-learning modules, for example Skillsoft e-learning. The suite of resources available should enable employees to have the opportunity to conduct job searches, refresh existing skills and acquire new sets of skills.

Evaluation of Activities

The Service Provider will facilitate individual evaluation of all the CTS events attended by DWP employees. This will include:

- Name of employee
- Location
- Details of the event attended
- Evaluation score

An Evaluation sheet will be issued and completed by each individual employee at the end of each event and counselling session.

The completed evaluation sheets and summary will be forwarded to the DWP Primary Contact.
3. PROCUREMENT PROCESS

Overview

DWP is using this Invitation to Tender to conduct a Further Competition exercise underneath ESPO Framework Agreement reference 3S_18 for the provision of Strategic HR Services.

All service providers awarded on Lot 6 of the Framework are invited to submit a Tender. All Tenders received (that are compliant i.e. submitted in accordance with the tendering instructions) will be evaluated in accordance with the evaluation criteria as set out below.

Tenders should be prepared and submitted (using ITT Part B of this Invitation to Tender document) in accordance with Section 5, Instructions for Completing and Submitting a Tender.

At DWPs discretion, Tenderers may be invited to clarify their Tender, as an aid for evaluators to fully understand their offers. All Tenderers should nonetheless take care to fully explain their offering in their Tender submission.

The Contract will be awarded to the Tenderer which scores the highest marks following the evaluation of all Tenders (in accordance with the methodology described in section 4, Evaluation of Tenders).

Indicative Procurement Timetable

The following indicative timetable is provided for Tenderers’ benefit. Please be aware that these are indicative timescales and may be subject to change at the absolute discretion of DWP.

<table>
<thead>
<tr>
<th>Stage / Activity</th>
<th>Indicative Date and Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invitation to Tender document issued</td>
<td>15 February 2019</td>
</tr>
<tr>
<td>Closing date for clarification questions</td>
<td>22 February 2019 @ 23:59</td>
</tr>
<tr>
<td>Closing date for submission of Tenders</td>
<td>01 March 2019 @ 14:00</td>
</tr>
<tr>
<td>Evaluation of Tenders</td>
<td>7 March 2019</td>
</tr>
<tr>
<td>Contract award</td>
<td>02 April 2019</td>
</tr>
<tr>
<td>Contract start date</td>
<td>03 April 2019</td>
</tr>
</tbody>
</table>
4. EVALUATION OF TENDERS

Introduction
This section provides an overview of the methodology which will be adopted by DWP to evaluate the Tenderer’s responses to each question set out within this ITT Part B and the DWP e-Sourcing portal. It also sets out the marking scheme which will apply.

The following information has been provided in relation to each question (where applicable);
- Guidance – sets out information for Tenderers to consider
- Score – details the marks available to evaluators during evaluation
- Weighting – highlights the relative importance of the question

The defined terms used in the ITT documents shall apply to this document.

Overview
The e-Sourcing event is broken down into the following Questionnaires:

<table>
<thead>
<tr>
<th>Questionnaire Reference</th>
<th>Questionnaire Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>KEY PARTICIPATION REQUIREMENTS</td>
</tr>
<tr>
<td>2</td>
<td>CONFLICTS OF INTEREST</td>
</tr>
<tr>
<td>3</td>
<td>COMPANY INFORMATION</td>
</tr>
<tr>
<td>4</td>
<td>SECURITY REQUIREMENTS</td>
</tr>
<tr>
<td>5</td>
<td>SERVICE DELIVERY</td>
</tr>
<tr>
<td>6</td>
<td>PRICE</td>
</tr>
</tbody>
</table>

Quality/Price Split
The ITT will be evaluated on the basis of 70% Quality and 30% Price.

Quality Evaluation Process
The evaluation of each response to the Service Delivery Questionnaire will be conducted and consensus checked in accordance with the Consensus Marking Procedure set out below.

Each response to questions within the Service Delivery Questionnaire will be marked in accordance with the table below:

<table>
<thead>
<tr>
<th>Mark</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>An unacceptable response with serious reservations. Failed to provide confidence that the proposal will meet the requirements.</td>
</tr>
<tr>
<td>25</td>
<td>A poor response with reservations. The response lacks convincing detail with risk that the proposal will not be successful in meeting all the requirements.</td>
</tr>
<tr>
<td>50</td>
<td>An acceptable response. The response generally meets the requirements, but lacks sufficient detail to warrant a higher mark.</td>
</tr>
<tr>
<td>75</td>
<td>A good response that meets the requirements with good supporting evidence. Demonstrates good understanding.</td>
</tr>
<tr>
<td>100</td>
<td>An excellent comprehensive response that fully meets the requirements. Detailed supporting evidence and no weaknesses resulting in a high level of confidence.</td>
</tr>
</tbody>
</table>
Each mark achieved will be multiplied by the corresponding % weighting to provide an overall question score. When the score for each question has been determined they will be added together to provide an overall score for the Quality Evaluation (“Quality Score”).

**Consensus Marking Procedure**

Tenders that are scored and require evaluation will be evaluated in accordance with the procedure described in this paragraph.

The Consensus Marking Procedure is a two-step process, comprising of:

- Independent evaluation; and
- Group consensus marking.

During the independent evaluation process, each evaluator will separately (i.e. without conferring with other evaluators) scrutinise the quality of answers given by Tenderers in their Tender. Each evaluator will then allocate a mark for the answer in accordance with the Marking Scheme applicable to that question.

The Commercial lead (non-scoring) will review the marks allocated by the individual evaluators before facilitating a group consensus marking meeting.

During the meeting, the evaluators will discuss the independent marks until they reach a consensus regarding the marks that should be attributed to each Tenderer’s answer to the questions.

Once all quality responses have been evaluated in accordance with Section 4 of this ITT Part A, the individual scores attributed to each response will be added together to provide a ‘Quality Score’.

**Price Evaluation Process**

Prices submitted by Tenderers in the ITT Part C, Pricing Schedule will be recorded and evaluated in accordance with the following process.

Tenderers are required to upload a completed ITT Part C, Pricing Schedule against the ‘Price’ Questionnaire within the e-Sourcing portal.

Prices will be evaluated against the range of prices submitted by all Tenderers.

A price is required for two contracting options, with volumes provided for each in the ITT Part C, Pricing Schedule:

- 2 years with the option to extend for 1 year (based on 2 year volumes) and
- 3 years with no option to extend (based on 3 year volumes).

The prices will be evaluated to assess the indicative cost per year of each of the above two options. The lowest price for each bidder based on the above will be used to establish an annual cost. The lowest annual cost per organisation of the two prices provided will be taken forward to the next stage of the evaluation.

The Tenderer with the lowest price for the requirement shall be awarded the Maximum Score Available. The remaining Tenderers shall be awarded a percentage of the Maximum Score Available equal to their price, relative to the lowest price submitted.

The calculation used is:

\[
\text{Price Score} = \frac{\text{Lowest price tendered} \times \text{Max Score Available}}{\text{Tenderers price} \times 0.30}\] (weighting)
Example:

The price selected to be included for evaluation purposes is the lowest annualised price and is highlighted below.

<table>
<thead>
<tr>
<th>Supplier</th>
<th>Quality Score</th>
<th>Annualised 2 year price (£000)</th>
<th>Annualised 3 year price (£000)</th>
<th>Price score</th>
<th>Final Score</th>
<th>Final Position following Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplier 1</td>
<td>60</td>
<td>£300</td>
<td>£290</td>
<td>20.69</td>
<td>80.69</td>
<td>3</td>
</tr>
<tr>
<td>Supplier 2</td>
<td>70</td>
<td>£400</td>
<td>£350</td>
<td>17.14</td>
<td>87.14</td>
<td>1</td>
</tr>
<tr>
<td>Supplier 3</td>
<td>50</td>
<td>£305</td>
<td>£310</td>
<td>19.67</td>
<td>69.67</td>
<td>5</td>
</tr>
<tr>
<td>Supplier 4</td>
<td>65</td>
<td>£300</td>
<td>£350</td>
<td>20.00</td>
<td>85.00</td>
<td>2</td>
</tr>
<tr>
<td>Supplier 5</td>
<td>55</td>
<td>£425</td>
<td>£450</td>
<td>14.12</td>
<td>69.12</td>
<td>6</td>
</tr>
<tr>
<td>Supplier 6</td>
<td>45</td>
<td>£200</td>
<td>£220</td>
<td>30.00</td>
<td>75.00</td>
<td>4</td>
</tr>
</tbody>
</table>

Based on the evaluation methodology the final scores would be as follows:

**Final score**

The Quality Score will be added to the Price Score to determine the Final score for each Tenderer ("Final Score").

The Contract shall be awarded on the basis of whichever is the lowest final price option between 2+1 years and 3 years to the supplier with the highest Final Score.

In the example above Supplier 2 would be awarded the Contract for 3 years, based on a score of 87.14.

**Evaluation Criteria**

A summary of the questions, along with; the minimum acceptable score, maximum score available and weighting (where applicable) are set out below:

Questionnaires 1 and 2 contain ‘Pass/Fail’ questions and act as a doorway for progression to the following stages of the evaluation. Tenderers are strongly advised to read and understand the specific guidance provided before responding to these questionnaires.

Questionnaire 3 is for information only. Although this questionnaire does not form part of the evaluation process, Tenderers are advised to complete it in full, as any omissions could affect the award process.

DWP reserve the right to challenge any information provided in response to Questionnaire 3 and request further information in support of any statements made therein.
# Questionnaires

## QUESTIONNAIRE 1 – KEY PARTICIPATION REQUIREMENTS

**GUIDANCE**
The following questions are ‘Pass/Fail’ questions. If Tenderers are unwilling or unable to answer “Yes”, their submission will be deemed non-compliant and shall be rejected.

<table>
<thead>
<tr>
<th>Question Number</th>
<th>Question</th>
<th>Max Score</th>
<th>Weighting (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Have you read, understood and agree with ITT Part A? By answering “Yes”, you are confirming your understanding and acceptance of the requirement / specification and the evaluation methodology / criteria.</td>
<td>Pass/Fail</td>
<td>N/A</td>
</tr>
<tr>
<td>1.2</td>
<td>Do you agree, without caveats or limitations, that in the event that you are successful the Terms and Conditions of 3S_18 - Strategic HR Services Framework and this ITT Part A will govern the provision of this Contract?</td>
<td>Pass/Fail</td>
<td>N/A</td>
</tr>
</tbody>
</table>

## QUESTIONNAIRE 2 – CONFLICT OF INTEREST

**GUIDANCE**
Question 2.1 is a ‘Yes/No’ question and will dictate whether or not question 2.2 needs to be answered.

Question 2.2 is a Pass / Fail question. Tenderers are required to provide details of how the identified conflict will be mitigated. DWP will review the mitigation in line with the perceived conflict of interest, to determine what level of risk this poses to them. Therefore if Tenderers cannot or are unwilling to suitably demonstrate that they have suitable safeguards to mitigate any risk then their Tender will be deemed non-compliant and will be rejected.

<table>
<thead>
<tr>
<th>Question Number</th>
<th>Question</th>
<th>Max Score</th>
<th>Weighting (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Please confirm whether you have any potential, actual or perceived conflicts of interest that may by relevant to this requirement.</td>
<td>None</td>
<td>N/A</td>
</tr>
<tr>
<td>2.2</td>
<td>We require that any potential, actual or perceived conflicts of interest in respect of this ITT are identified in writing and that Tenderers outline what safeguards would be put in place to mitigate the risk of actual or perceived conflicts arising during the delivery of these Services.</td>
<td>Pass/Fail</td>
<td>N/A</td>
</tr>
</tbody>
</table>
### QUESTIONNAIRE 3 – COMPANY INFORMATION

**GUIDANCE**
The following questions are for information only and do not form part of the evaluation. Information provided in response to these questions may be used in preparation of any Contract Award and any omissions may delay completion of this Tender exercise.

<table>
<thead>
<tr>
<th>Question Number</th>
<th>Question</th>
<th>Max Score</th>
<th>Weighting (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Please provide the name, office address, telephone number and email address for your organisation's Tender point of contact.</td>
<td>None</td>
<td>N/A</td>
</tr>
<tr>
<td>3.2</td>
<td>Please confirm whether your organisation is an SME as defined within <a href="https://eur-lex.europa.eu/">EU recommendation 2003/361</a></td>
<td>None</td>
<td>N/A</td>
</tr>
</tbody>
</table>
| 3.3             | Please provide details of any sub-contractors you propose to use in order to meet your obligations should you be awarded a Contract. Your response must include their;  
  - Trading Name(s)  
  - Registered Address(es) and contact details  
  - Goods / Services to be provided | None      | N/A           |
| 3.4             | If you are the Lead contact for a Group of Economic Operators, please provide details of all the members of the Group. Your response must include their;  
  - Trading Names(s)  
  - Registered Address(es) and contact details  
  - Role/responsibility within the Group | None      | N/A           |

### QUESTIONNAIRE 4 – Security Requirements

<table>
<thead>
<tr>
<th>Question Number</th>
<th>Question</th>
<th>Max Score</th>
<th>Weighting (%)</th>
</tr>
</thead>
</table>
| 4.1             | Does your organisation and your proposed solution meet all of the DWP security requirements as detailed in ITT Part A, Section 7 – Terms and Conditions?  
  * DWP will require a draft Security Plan from the successful Tenderer prior to Contract Signature. A Template is included on the DWP e-tendering portal but should not be submitted as part of the Tender. | Pass/Fail | N/A           |
The following Service Delivery Questionnaire 5 is designed to test Tenderers’ ability to deliver the requirement as set out in ITT Part A, Section 2. Requirement (including Specification). Tenderers MUST answer all Service Delivery questions.

Tenderers must achieve the minimum acceptable Quality Score, as described, for each of the questions below. Only those responses which achieve the minimum acceptable Quality Score will be included in the Price Evaluation Process.

Where only one (1) Tender submission is received and which does not meet the minimum acceptable Quality Score, DWP reserves the right to enter into dialogue and seek assurances regarding the delivery of the requirement.

Tenderers’ responses must clearly demonstrate how they propose to meet the requirements set out in the question and address each element in the order they are asked.

Tenderers’ responses should be limited to, and focused on each of the component parts of the question posed. They should refrain from making generalised statements and providing information not relevant to the topic.

Whilst there will be no marks given to layout, spelling, punctuation and grammar, it will assist evaluators if attention is paid to these areas including identifying key sections within responses.

Tenderers will be marked in accordance with ITT Part A, Section 4. Evaluation of Tenders.

There is a Maximum Word Count of 750 per question (Arial font size 12). Additional wording exceeding the first 750 words of the response will not be assessed.

<table>
<thead>
<tr>
<th>QUESTIONNAIRE 5 – Service Delivery</th>
<th>Weighting – 70%</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Tenderers MUST answer ALL the following questions. Any response that fails to meet the minimum score of 50 will be deemed non-compliant and will not progress to the Price evaluation stage.</td>
<td></td>
</tr>
<tr>
<td><strong>Question Number</strong></td>
<td><strong>Question</strong></td>
</tr>
</tbody>
</table>
| 5.1 | **Please detail how you propose to deliver the DWP Requirement including:**  
- Accommodation arrangements  
- Workshop content  
- Delivery arrangements  
- Administration of the Contract | 50 | 100 | 30% |
| 5.2 | **Please detail how your organisation will deliver the service levels and standards required by DWP, meeting them in a timely manner:**  
- Describe how you will ensure access to sufficient qualified trainers to meet DWP requirements for delivery across the UK.  
- Demonstrate your contingency measures to ensure service is delivered to the required timescales. | 50 | 100 | 30% |
| 5.3 | **Describe how you will provide access to the Services to be delivered under this requirement:**  
- Use of online portal / email / telephony  
- Booking / order details and confirmations.  
- Process for clarifying requests where needed. | 50 | 100 | 10% |
| 5.4 | **Describe your organisation's approach to customer service, detailing the customer journey and support provided:**  
- Customer Journey  
- Detail your management structure demonstrating how this impacts on quality assurance  
- Describe your procedure for identifying and acting on incidents of poor performance  
- Detail your full end to end complaints procedure, turnaround times, process for mitigating repeat complaints and  
- Customer satisfaction survey – regularity, how you will implement and use it. | 50 | 100 | 20% |
| 5.5 | **Detail your approach to contract management and how you will meet reporting requirements:**  
- Example pack of proposed MI that meets the requirements  
- Key resource assigned to this account – account manager and customer service team structure | 50 | 100 | 10% |
QUESTIONNAIRE 6 – PRICE

Weighting – 30 %

GUIDANCE

Tenderers must enter costs and upload the ITT Part C, Pricing Schedule at the question level on the DWP e-sourcing portal.

Prices should be submitted in pounds Sterling inclusive of any expenses in line with the Framework. These prices will be exclusive of VAT.

Tenderers will be marked in accordance with the marking scheme at Section 4 – Evaluation of Tenders.

<table>
<thead>
<tr>
<th>Question Number</th>
<th>Question</th>
<th>Max Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>Please confirm, by selecting ‘YES’ that you have attached a completed ITT Part C, Pricing Schedule to the response to this question. In so doing, you are also confirming that prices offered are inclusive of any expenses as outlined in the guidance above, exclusive of VAT and firm for a period of 90 days following the Deadline for Submission.</td>
<td>100</td>
</tr>
</tbody>
</table>

Award of Contract

Upon conclusion of the evaluation, the scores for Quality (Service Delivery) and Price will be combined to give a total score out of 100 and the Tenderer with the highest score will be awarded the Contract.

The Tenderer to be offered the Contract will be advised accordingly via the DWP e-tendering portal. Such award, offered pursuant to this Invitation to Tender, will be on the basis of the most economically advantageous tender, based on the evaluation criteria described above.

Tenderers whom it is proposed will not be offered the Contract will be advised of this via email and will be entitled to receive written feedback on the relative merits and characteristics of their Tender submission compared with that of the accepted Tender.

The award of the Contract will be subject to a standstill period of 10 days between the notification of award decision and Contract conclusion. If representations are received during the standstill period, DWP may have to suspend the award of the Contract and extend the standstill period until any issues have been resolved.

If there are no representations, the unsuccessful Tenderers will be notified by email.

The successful Tenderer is advised that they must not take any action for example commencing the delivery of or implementation of Services until the award decision is finalised and communicated as above. The successful Tenderer must also refrain from undertaking any publicity, marketing or promotional activity until such confirmation is received. In any event, the successful Tenderer must seek prior approval from DWP, before undertaking any marketing activity.

DWP does not bind itself to accept the lowest or any Tender, and unless a Tenderer expressly states that a partial award will not be acceptable, then the right is reserved to accept a Tender in part.

Upon conclusion of all the above stages, a formal Contract will be entered into between DWP and the successful Tenderer. The terms and conditions governing the Contract will be those agreed between ESPO and the successful Tenderer as part of the overarching Framework agreement and those contained in this Invitation to Tender. Unless and until a formal Contract is prepared and executed, the Tenderer’s Tender submission, together with DWP acceptance thereof, shall constitute a binding Contract between the parties. Please see Section 7 for further details on the terms and conditions.
5. INSTRUCTIONS FOR COMPLETING AND SUBMITTING A TENDER

Completing the Invitation to Tender
To enable evaluating officers to assess fully the Tenderer’s suitability all of the information requested in this Invitation to Tender must be provided. Failure to complete the Tender submission in full or failure to provide any of the documents requested may result in your Tender being rejected. Questions should be answered as instructed:

• Please answer every question.
• Questions must be answered in English.
• When posed with Yes / No questions, please delete as applicable.
• All other questions will require you to input text or numbers.
• Any figures requested should be stated in full (i.e. £4,000,000 not £4m) and in GBP. Where information relates to foreign accounts, amounts in alternative currencies may be stated, but must also be converted to GBP.
• If the question does not apply to you please write N/A (not applicable); if you don’t know the answer please write N/K (not known).

Only the information contained within this Invitation to Tender or otherwise communicated in writing by DWP to the Tenderers should be considered when submitting your Tender.

Any information and/or documents submitted on or with this Tender must relate to the Tenderer only - the Tenderer being the organisation which it is proposed will enter into a formal Contract should their Tender be successful. (All responses and submissions provided by the Tenderers will form part of that Contract). DWP may seek further clarification from the Tenderers following submission of completed forms where required.

Format of Tender Submission
Tenderers are required to complete all of the documentation listed below. You may complete the documentation electronically but must not make any changes to the structure and/or order of the document provided (except as necessary to accommodate your responses, i.e. enlarging response boxes etc.). In particular, please do not undertake any substantive changes to formatting, or add appendices instead of completing the tables provided, and so on, except as may be expressly requested or are necessary to properly present your offer.

The declaration on the DWP e-tendering portal must be signed by a director, partner or other senior authorised representative in her / his own name and on behalf of the organisation. The details contained in each Tenderer’s response may be specified in any Contract or may form an appendix thereof. Tenderers should therefore make sure that their responses are authorised at an appropriate level which would enable them, should they be successful, to become the subject of a binding Contract.

Submitting your Tender
In order to submit a Tender for this procurement, you are required to upload your Tender electronically using the DWP e-tendering portal and prior to the Tender closing date and time. Please ensure you complete all the electronic fields within the DWP e-tendering portal Tender opportunity prior to submission. Tender submissions or any supporting documentation submitted by any other means (email, post etc.) will be rejected.

Completed Tender submissions must be completely uploaded by 01 March 2019 (2pm). Any amendments to the submission deadline will be communicated through the DWP e-tendering Portal. Tenders submitted after the designated time and date will be rejected.
6. CONDITIONS OF TENDER

In submitting a response to this Invitation to Tender, Tenderers do so on the conditions set out below. In the event of any breach of the conditions DWP shall be entitled to terminate any arrangement made as a result of such Tender and to claim damages accordingly.

Warnings and Disclaimers

- Tenderers should consider only the information contained within this Invitation to Tender, or otherwise communicated in writing to Tenderers, when preparing their Tender.
- Information supplied by DWP (whether in this document or otherwise) is supplied for general guidance in the preparation of Tenders. Tenderers must satisfy themselves by their own investigations with regard to the accuracy of such information. DWP cannot accept responsibility for any inaccurate information obtained by Tenderers.

Tenderer Conduct and Conflicts of Interest

- Tenderers shall not, before the date and time specified for return of the Tender, communicate to any person the amount or approximate amount of the Tender or proposed tender, except where the disclosure in confidence of the approximate amount of tender is necessary to obtain insurance cover.
- The Tender shall be a bona-fide Tender and shall not be fixed or adjusted by or under or in accordance with any agreement or arrangement with any other person.
- Tenderers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from Tendering or agree as to the amount of any other tender to be submitted.
- Tenderers must not, in connection with the proposed Contract:
  - offer any inducement, fee or reward to any member or officer of DWP
  - do anything which would constitute a breach of the Bribery Act 2010 or the Section 117 (2) Local Government Act 1972, or
  - canvass any of the persons referred to above in connection with the Contract; or contact any member or officer of DWP or any person acting as an advisor to DWP (except as authorised by this Invitation to Tender for the purpose of asking genuine questions about the process or the Contract) about any aspect of the proposed Contract or for soliciting information in connection therewith.
- Tenderers are responsible for ensuring that no conflicts of interest exist between the Tenderer and its advisors and DWP and its advisors. Any Tenderer who fails to comply with this requirement may be disqualified from the procurement process at the discretion of DWP.

Tenderer’s Responsibility to Submit a Complete Tender

- It is the Tenderer’s responsibility to ensure that their submitted Tender is complete, prepared and submitted in accordance with the instructions contained herein, and signed and dated where required. DWP are not obliged to consider any Tender which is incomplete or not prepared or submitted in accordance with the said instructions, but at its sole discretion DWP may offer a Tenderer who submits such a tender an opportunity to remedy the omission before evaluation of the Tender takes place, provided that in the judgement of DWP this does not adversely affect the integrity and fairness of the Tender exercise.
- Unless specifically withdrawn in writing, Tenders shall remain open for acceptance for a period of 90 days from the return date.

Bid Costs

- DWP will not be liable for any Tender costs, expenditure, work, or effort incurred by a Tenderer in proceeding with or participating in this procurement process, including if the procurement process is terminated or amended by DWP.
DWP’s Rights

DWP reserves the right to:

- Seek additional information or clarification from Tenderers at any time during the Tender process.
- Disqualify any Tenderer that does not submit a compliant Tender, in accordance with the instructions given in this Invitation to Tender.
- Disqualify any Tenderer that is guilty of serious misrepresentation in relation to its Tender, expression of interest, the application form or the procurement process.
- Withdraw this Invitation to Tender at any time, and to re-invite Tenders on the same or any alternative basis.
- Choose not to award any Contract as a result of the procurement process.
- Make whatever changes it sees fit to the timetable, structure or content of the procurement process.
- Retain copies of all Tender submissions to satisfy its audit obligations and for other purposes.

Confidentiality and Freedom of Information Act

- This Invitation to Tender is made available on condition that its contents (including the fact that the Tenderer has received this Invitation to Tender) is kept confidential by the Tenderer and is not copied, reproduced, distributed or passed to any other person at any time, except for the purpose of enabling the Tenderer to submit a Tender.
- As a public body, DWP is subject to the provisions of the Freedom of Information Act 2000 in respect of information it holds (including third-party information). Any member of the public or other interested party may make a request for information.
- DWP shall treat all Tenderers’ responses as confidential during the procurement process. Requests for information received following the procurement process shall be considered on a case-by-case basis, applying the principles of the FOIA.
- While DWP aims to consult with third-party providers of information before it is disclosed, it cannot guarantee that this will be done. Therefore, Tenderers are responsible for ensuring that any confidential or commercially sensitive information has been clearly identified to DWP in the form provided in the Tender Submission Document (i.e. the Freedom of Information Exclusion Schedule).
- Tenderers should be aware that, in compliance with its transparency obligations, DWP may publish details of its Contract(s), including the Contract values and the identities of its service providers on its website.
- More information is available on www.ico.org.uk

Publicity

- No publicity regarding the Contract or the award of any Contract will be permitted unless and until DWP has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents or any proposals relating to it without the prior written consent of DWP.
7. TERMS AND CONDITIONS

By submitting a bid, Tenderers are agreeing to be bound by the call-off terms and conditions without further negotiation or amendment, and must sign the Tendering Declaration accordingly.

Should a qualification of offer be made to change the terms and conditions by any Tenderer, then grounds will exist to exclude bids from further consideration.
THE DEPARTMENT FOR WORK AND PENSIONS

- and –

THE SERVICE PROVIDER

CALL-OFF TERMS

relating to

STRATEGIC HR SERVICES

CONTRACT REF

3S_18
CALL-OFF TERMS

BETWEEN

(1) The customer identified in the Form of Contract (the “Customer”); and

(2) The company identified in the Form of Contract (the “Service Provider”).

WHEREAS

(A) “ESPO” selected framework providers, including the Service Provider, to provide Goods and/or Services;

(B) the Service Provider undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 3s_18 dated 3rd July 2018 (the “Framework Agreement”);

(C) ESPO and the Service Provider have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Service Provider for the Service Provider to supply Goods and/or Services;

(D) The Customer enters into this Contract on the terms hereinafter appearing.

GENERAL PROVISIONS

a. Definitions

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

"Affiliates" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

“Affected Party” means the party seeking to claim relief in respect of a Force Majeure;

"Approval" means the prior written consent of the Customer and “Approve” and “Approved” shall be construed accordingly;

"Assignment" means the fixed period of time that a Temporary Worker is placed with the Customer;

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;

"BCDR Plan" means any plan relating to business continuity and disaster recovery as referred to in the Master Contract Schedule and/or any other Contract Document;

"Call-off Terms" means these terms and conditions in respect of the provision of the Goods and/or Services, together with the schedules hereto;

"Change in Law" means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-off Terms which comes into force after the Commencement Date;
"Commencement Date" means the date set out in the Master Contract Schedule and/or the Form of Contract Document;

"Commercially Sensitive Information" means the confidential information listed in set out at Schedule 9 of the Framework Agreement (if any) the Master Contract Schedule and/or a Contract Document comprising of commercially sensitive information relating to the Service Provider, its IPR or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;

"Confidential Information" means the Customer's Confidential Information and/or the Service Provider's Confidential Information;

"Continuous Improvement Plan" means a plan for improving the provision of the Services and/or reducing the charges produced by the Service Provider pursuant to schedule 6 of the Framework Agreement;

"Contract" means the contract entered into by the Customer and the Service Provider pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement comprising of the Form of Contract Document, these Call-Off Terms, the schedules hereto, the Master Contract Schedule and any other Contract Document;

"Contract Document" means all documents listed in the Form of Contract Document and/or within a schedule referred to in the Form of Contract Document;

"Contract Period" means the period from the Commencement Date to:

a) the Expiry Date; or

b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;

"Contract Charges" means the prices (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in the Master Contract Schedule and/or any other Contract Document, for the full and proper performance by the Service Provider of its obligations under the Contract less any Service Credits;

"Contracting Authority" means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer;

"Control" means control as defined in section 1124 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;

"Controller" shall take the meaning given in the GDPR;
"Conviction" means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);

"Critical Service Failure" shall have the meaning given in the Master Contract Schedule and/or any other Contract Document;

"Customer Data" means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:

(i) are supplied to the Service Provider by or on behalf of the Customer; or

(ii) the Service Provider is required to generate, process, store or transmit pursuant to the Contract; or

(b) any Personal Data for which the Customer is the Data Controller;

"Customer Pre-Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Service Provider of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Customer’s Premises" the premises identified in the Master Contract Schedule and/or any other Contract Document and which are to be made available for use by the Service Provider for the provision of the Goods and/or Services on the terms set out in the Contract;

"Customer Rebate" means the rebate sum (if any) agreed by the Customer and the Service Provider in accordance with clause 11.5;

"Customer Responsibilities" means the responsibilities of the Customer set out in the Master Contract Schedule and/or any other Contract Document;

"Customer Representative" means the representative appointed by the Customer from time to time in relation to the Contract;
"Customer's Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Service Providers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider 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;

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Officer" shall take the meaning given in the GDPR;

"Data Subject" shall take the meaning given in the GDPR;

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

"Default" means any breach of the obligations of the Service Provider (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 Service Provider or Service Provider’s Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Service Provider is liable to the Customer;

"Delay Payments" means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule and/or any other Contract Document;

"Deliverables" means those deliverables listed in the Master Contract Schedule and/or any other Contract Document (if any);

"Delivery" means the time at which the Goods and/or Services have been installed by the Service Provider and the Customer has issued the Service Provider with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in clause 42.2;

"DPA 2018" means Data Protection Act 2018;
"Employment Checks" means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;

"Environmental Information Regulations" 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;

"Equality Legislation" means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;

"Equipment" means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;

"ESPO" means Leicestershire County Council, acting in its capacity as servicing authority to a joint committee known as ESPO, established under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000, whose place of business is at of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES.

"Expiry Date" means the date set out in the Master Contract Schedule and/or any other Contract Document;

"Form of Contract" means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Service Provider and which lists all of the Contract Documents;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that 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, occurrence or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:

c) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;

d) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;

e) acts of government, local government or Regulatory Bodies;

f) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;

g) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:

i) any industrial dispute relating to the Service Provider, the Service Provider's Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and

ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679);

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Goods and/or Services" means the goods and/or services to be supplied as specified in the Form of Contract, Master Contract Schedule and/or any other Contract Document;

"Holding Company" shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;

"Implementation Plan" means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated;

"Information" has the meaning given under section 84 of the FOIA;

"Initial Term" the period commencing on the Commencement Date and ending on the Expiry Date;
"Intellectual Property Rights" or "IPRs" means:

a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;

b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

ITT Response means the response submitted by the Service Provider to the Invitation to Tender issued by the Customer on [insert date];

"Key Personnel" means the individuals (if any) identified in the Master Contract Schedule and/or any other Contract Document;

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Service Provider's or the Customer's possession before the Commencement Date;

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

"LED" means Law Enforcement Directive (Directive (EU) 2016/680);

"Management Information" means the management information specified in Framework Schedule 7 (Management Information Requirements);

"Master Contract Schedule" means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement;

"Milestone" means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;

"Milestone Date" means the date set against the relevant Milestone in the Implementation Plan;
“Mirror Framework” means any framework agreement entered into by the Service Provider and a company owned by ESPO;

"Month" means calendar month and "monthly" shall be interpreted accordingly;

"Parent Company" means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider;

"Party" means the Service Provider or the Customer and "Parties" shall mean both of them;

"Personal Data" shall take the meaning given in the GDPR;

"Personal Data Breach" shall take the meaning given in the GDPR;

"Premises" means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document;

"Processor" shall take the meaning given in the GDPR;

"Prohibited Act” Means:

a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO 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; or

b) committing any offence:

i) under the Bribery Act 2010; or

ii) under legislation creating offences concerning fraudulent acts; or

iii) at common law concerning fraudulent acts relating to the Contract or any other contract with ESPO and/or Customer and/or any other Contracting Body; or

c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer or any other Contracting Body
"Project Specific IPRs" means:

(a) IPRs in the Services, Deliverables and/or Goods provided by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or

(b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Service Provider (or by a third party on behalf of the Service Provider) under the Contract,

"Property" means the property, other than real property and IPR, issued or made available to the Service Provider by the Customer in connection with the Contract;

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


"Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance;

"Regulated Activity" means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;

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

"Related Service Provider" means any person who provides services to the Customer which are related to the Services from time to time;

"Replacement Service Provider" any third party Service Provider of Replacement Services appointed by the Customer from time to time;
"Replacement Service" any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Customer internally and/or by any third party;

"Request for Information" means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

"Service Credits" means the sums referred to or sums calculated in accordance with the ITT Part A being payable by the Service Provider in respect of any failure by the Service Provider to meet one or more Service Levels;

"Service Levels" means any service levels applicable to the provision of the Services;

"Service Provider" means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;

"Service Provider Personnel" means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;

"Service Provider Pre-Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Service Provider's Representative" means the representative appointed by the Service Provider from time to time in relation to the Contract;

"Service Provider Solution" means the Service Provider's solution for the provision of the Goods and/or Services as referred to in the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;

"Service Provider's Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

"Services" means the services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents. For the avoidance of doubt, the performance of the Assignment by the Temporary Worker does not form part of the Services;
"Sites" means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services;

"Staff" means all persons employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Contract. For the avoidance of doubt, Temporary Workers shall not be deemed to be Staff;

"Sub-Contract" means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or any part thereof;

"Sub-Contractor" means the third party with whom the Service Provider enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

"Sub-processor" means any third Party appointed to process Personal Data on behalf of the Service Provider related to this Contract;

"Technical Standards" means the technical standards set out in the Framework Agreement and if applicable the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;

"Temporary Worker" means a person engaged by the Service Provider under a contract for services or via a limited company and provided on Assignment to the Customer;

"Tender" means the tender submitted by the Service Provider to the Customer in response to the Customer's invitation to Service Providers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;

"Term" the period of the Initial Term as may be varied by:

(a) any extensions to this Contract which are agreed pursuant to clause 3; or

(b) the earlier termination of this Contract in accordance with its terms;

"TFEU" means the Treaty on the Functioning of the European Union (OJ No. C 115);

"Transferring Goods" means Goods, title to which transfers between the Parties in accordance with clause 4.6.1;
"Treaties" means the Treaty of the European Union (OJ No. C 115) and TFEU;

"Undelivered Goods" shall have the meaning given in clause 4.5.8;

"Variation" has the meaning given to it in clause 33;

"Variation Procedure" means the procedure set out in clause 33;

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

"Working Day" means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.1 **Interpretation**

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

1.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.1.2 words importing the masculine include the feminine and the neuter;

1.1.3 the words "include", "includes" and "including" “for example” and “in particular” and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;

1.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.1.5 the schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;

1.1.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.1.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

1.1.8 references to “clauses” and “schedules” are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to “paragraphs” are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;

1.1.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do
not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;

1.1.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and

1.1.11 in the event of and only to the extent of any conflict between the Master Contract Schedule, these Call-Off Terms, any other Contract Document any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1.1.11.1 the Framework Agreement;

1.1.11.2 these Call-Off Terms;

1.1.11.3 the Master Contract Schedule; and

1.1.11.4 any other Contract Document or document referred to in these Call-Off Terms.

2. DUE DILIGENCE

2.1 The Service Provider acknowledges that it:

2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and

2.1.3 has entered into this Contract in reliance on its own due diligence alone.

2.2 The Customer hereby confirms that it has all requisite authority to enter into the Contract.

3. CONTRACT PERIOD

3.1 This Contract shall take effect on the Commencement Date and shall continue for the Term.

3.2 The Customer may extend this Contract beyond the Initial Term by a further period or periods as stated in the Master Contract Schedule (Extension Period). If the Customer wishes to extend this Contract, it shall give the Service Provider three (3) months’ written notice of such intention before the expiry of the Initial Term or Extension Period.

3.3 If the Customer gives such notice then the Term shall be extended by the period set out in the notice.
3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 20 shall apply.

4. **SUPPLY OF GOODS AND/OR SERVICES**

4.1 **Supply of the Goods and/or Services**

4.1.1 The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan.

4.1.2 The Service Provider shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Service Provider supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.

4.1.3 If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Goods and/or Services does not meet the requirements of the Contract or differs in any way from those requirements, the Service Provider shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

4.1.4 The Service Provider accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:

4.1.4.1 the same is notified in writing to the Service Provider within three (3) Working Days of receipt of the Ordered Goods by the Customer; and

4.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Service Provider's instructions.

4.1.5 Where the Service Provider accepts responsibility under clause 4.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Service Provider's reasonable satisfaction, to have been lost or damaged in transit.

4.1.6 The Service Provider agrees that the Customer relies on the skill and judgment of the Service Provider in the supply of the Goods and/or Services and the performance of its obligations under the Contract.

4.2 **Provision and Removal of Equipment**

4.2.1 Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Service Provider shall provide all the Equipment necessary for the supply of the Goods and/or the Services.

4.2.2 The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.

4.2.3 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Customer shall have no liability for any loss.
of or damage to any Equipment unless and to the extent that the Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Service Provider shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Service Provider's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Service Provider.

4.2.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

4.2.5 The Service Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

4.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and

4.2.5.2 replace such item with a suitable substitute item of Equipment.

4.2.6 Upon termination or expiry of the Contract, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or Service Provider's Staff.

4.3 Quality

4.3.1 The Service Provider shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and/or Services must be provided has not been specified in the Contract, the Service Provider shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the supply of the Goods and/or Services commencing and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

4.3.2 The Service Provider shall ensure that the Staff shall at all times during the Contract Period:

4.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and/or Services;

4.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and

4.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
4.3.3 The Service Provider shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.

4.3.4 The Service Provider shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any) (as a minimum), the Master Contract Schedule and/or any other Contract Document and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.

4.3.5 The Service Provider shall at all times during the Contract Period ensure that:

4.3.5.1 the Goods and/or Services conform in all respects with the specifications set out in the Master Contract Schedule and/or any other Contract Document and/or where applicable the Framework Agreement;

4.3.5.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Master Contract Schedule and/or any other Contract Document;

4.3.5.3 the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;

4.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Service Provider by the Customer; and

4.3.5.5 the Goods and/or Services are supplied in accordance with the Service Provider Solution.

4.4 NOT USED

4.5 Delivery

4.5.2 The Service Provider shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.

4.5.3 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.

4.5.4 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Service Provider fails to deliver the Goods and/or Services within the time specified in accordance with clause 4.1.1 and/or the Master Contract Schedule and/or any other Contract Document and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
4.5.5 Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-Contractors at such place or places as set out in the Master Contract Schedule and/or any other Contract Document.

4.5.6 Where the Goods are delivered by the Service Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer’s vehicle.

4.5.7 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Service Provider’s Service Providers or carriers at such place as the Customer or duly authorised person shall reasonably direct.

4.5.8 In the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("Undelivered Goods and/or Services") then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and/or Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and/or Services are Delivered.

4.5.9 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in the Master Contract Schedule and/or any other Contract Document. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Service Provider to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Service Provider for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Service Provider.

4.6 **Ownership and Risk**

4.6.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to the order.

4.6.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

4.7 **Guarantee**

The Service Provider hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Service Provider of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which
the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

5. **ASSISTANCE ON EXPIRY OR TERMINATION**

5.1 In the event that the Contract expires or is terminated the Service Provider shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Service Provider.

6. **DISASTER RECOVERY AND BUSINESS CONTINUITY**

6.1 The Service Provider will maintain in place throughout the Contract Period business continuity arrangements and will review those arrangements at appropriate intervals and if necessary update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Service Provider’s organisation, delivery of the Goods and/or Services to the Customer is subject to a minimum of disruption.

7. **MONITORING OF CONTRACT PERFORMANCE**

7.1 The Service Provider shall comply with the monitoring arrangements referred to in the Master Contract Schedule and/or any other Contract Document including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.

7.2 Where requested by the Customer, the Service Provider shall supply the Management Information to the Customer in the form and periodically as specified in the Master Contract Schedule.

8. **DISRUPTION**

8.1 The Service Provider 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 contractor employed by the Customer.

8.2 The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Service Provider’s own employees or others, which affects or might affect the Service Provider’s ability at any time to perform its obligations under the Contract.

8.3 In the event of industrial action by the Staff, the Service Provider shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.

8.4 If the Service Provider’s proposals referred to in clause 8.3 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.

8.5 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by 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 Service Provider as a direct result of such disruption.
9. **SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS**

9.1 The Service Provider shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Service Provider.

9.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider’s performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

9.3 Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or Services are not supplied in accordance with, or the Service Provider fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:

9.3.1 at the Customer's option, give the Service Provider the opportunity at the Service Provider's expense to either remedy any defect in the Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;

9.3.2 reject the Goods (in whole or in part) and require the Service Provider to remove the Goods (in whole or in part) at the risk and cost of the Service Provider on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Service Provider;

9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;

9.3.4 if the Master Contract Schedule and/or any other Contract Documents provide for the payment of Delay Payments, then the Service Provider shall pay such amounts (calculated in accordance with the Master Contract Schedule and/or any other Contract Document) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is met;

9.3.5 carry out at the Service Provider's expense any work necessary to make the Goods and/or Services comply with the Contract;

9.3.6 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;
9.3.7 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services; and/or

9.3.8 charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or 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 Service Provider for such part of the Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

9.4 In the event that the Service Provider:

9.4.1 fails to comply with clause 9.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

9.4.2 persistently fails to comply with clause 9.3 above,

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

10. NOT USED

11. PAYMENT AND CONTRACT CHARGES

11.1 Contract Charges

11.1.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).

11.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.

11.1.3 If at any time during the Contract Period the Service Provider reduces its rates of Charges for any Goods and/or Services which is provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Service Provider shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.

11.1.4 The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement which is specifically commissioned from the Service Provider by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and/or
Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.

11.1.5 The Parties acknowledge that the Service Provider is required to pay to ESPO, and where relevant, the Trading Company, a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

11.2 Payment and VAT

11.2.1 Where the Service Provider submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.

11.2.2 The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

11.2.3 The Customer shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.

11.2.4 Where the Customer fails to comply with clause 11.2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.2.2 after a reasonable time has passed.

11.2.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

(a) provisions having the same effect as clauses 11.2.1 – 11.2.3 of this Framework Agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 11.1.1 – 11.1.4 of this Framework Agreement.

For the purposes of this sub clause 11.2.4 “Sub-Contract” means a contract between two or more Service Providers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or part of this Framework Agreement.

11.2.6 The Service Provider shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Service Provider’s failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause shall be paid by the Service Provider 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.
11.2.7 The Service Provider shall not suspend the supply of the Services and/or Goods (as applicable) unless the Service Provider is entitled to terminate the Contract under clause 26 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

11.3 Recovery of Sums Due

11.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider 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 Service Provider under the Contract or under any other agreement or contract with the Customer.

11.3.2 Any overpayment by either Party, whether of the Contract Charges 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.

11.3.3 The Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.

11.3.4 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.

11.4 Euro

11.4.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Service Provider free of charge to the Customer.

11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Service Provider.

11.5 Customer Rebate

11.5.2 The Customer and the Service Provider may (but shall not be obliged) in advance of agreeing to take a supply of goods or services seek to agree a Customer Rebate. Where such rebate is agreed the amount of the Customer Rebate shall be documented in the Order form and reported to ESPO by the Customer and the Service Provider.

11.5.3 Where a Customer Rebate has been agreed, the Customer shall submit invoices to the Service Provider in respect of the Customer Rebate due monthly based on the invoices paid by that Customer in the previous
month. All Such amounts shall also be notified in writing by the Service Provider to ESPO with the next set of Management Information.

11.5.4 The Service Provider shall pay the amount stated in any invoice submitted under clause 11.5.2 within thirty (30) Working Days of the date of issue of the invoice.

11.5.5 All Customer Rebates shall be paid by the Service Provider to the Customer without any set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11.5.6 The Customer Rebate shall apply to the full value of the Goods and/or Services as specified in each and every Contract and shall not be varied as a result of any reduction in the Charges due to the application of any service credits however the calculation of the Customer Rebate may be calculated on the value of Charges less any rebate payable to ESPO or any Trading Company under the Framework Agreement (thus reducing, for calculation purposes only, the overall value of the contract upon which the Customer Rebate is calculated).

11.5.7 The Customer Rebate shall be exclusive of VAT. The Service Provider shall pay the VAT on the Customer Rebate at the rate and in the manner prescribed by Law from time to time.

11.5.8 Interest shall be payable on any late payments of the Customer Rebate under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any amendment thereof.

11.5.9 The Customer Rebate shall remain payable throughout the duration of any Contract irrespective of the termination for any reason of the Framework Agreement including the effluxion of time and for the avoidance of doubt whether or not the Service Provider succeeds in being awarded any subsequent Service Provider status on renewal of the Framework Agreement.

12. NOT USED

13. SERVICE PROVIDER'S STAFF

13.1 The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Customer’s Premises:

13.1.1 any member of the Staff; or

13.1.2 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.

13.2 At the Customer's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
13.3 Staff engaged within the boundaries of the Customer’s 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 Customer’s Premises.

13.4 If the Service Provider fails to comply with clause 13.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

13.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider and Staff have failed to comply with clause 13.2 shall be final and conclusive.

Children and Vulnerable Adults

13.6 Where the provision of the Goods and/or Services requires any of the Service Provider’s employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Service Provider will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Children’s Barred List relating to the protection of children.

13.7 The Service Provider will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.

13.8 The Service Provider will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.

13.9 The Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups and will notify ESPO immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Customer.

13.10 Where the provision of the Goods and/or Services does not require any of the Service Provider’s employees or volunteers to work in a Regulated Activity but where the Service Provider’s employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider will in respect of such employees and volunteers:
   a) carry out Employment Checks; and
   b) carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Contract Period.

13.11 Where the principle obligation of the Service Provider is to effect delivery of goods to a site and does not require any element of on-site working including installation and commissioning of Goods in a private dwelling, neither the Service Provider nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Service Provider shall ensure that those engaged in undertaking the duties under this contract, including employees, servants, agents and others are of suitable standing and
good character and provide them with copies of the Specification and secure their written acknowledgement of receipt and understanding.

14. **TUPE**

14.1 The Parties hereby acknowledge that, pursuanta to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), there shall be a relevant transfer on the Commencement Date and the contracts of employment of those employees who are wholly or mainly assigned in the Services immediately before the Commencement Date ("the Transferring Employees") shall take effect as if originally made between the Service Provider and the employees (save for those who object pursuant to Regulation 4(7) of TUPE.

14.2 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement date but which are attributable in whole or in part to the period after the Commencement Date.

14.3 Not later than twelve months prior to the end of the Contract Period, the Service Provider shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Service Provider’s Staff including the following:

(a) the total number of the Service Provider’s Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and

(b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pension entitlements of the Service Provider’s Staff referred to in clause 14.3(a); and

(c) the terms and conditions of the employment/engagement of the Service Provider’s Staff referred to in clause 14.3(a), their job titles and qualifications; and

(d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(e) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

14.4 At intervals to be stipulated by the Customer (which shall not be more frequent than every thirty days) immediately prior to the end of the Contract Period the Service Provider shall deliver to the Customer a complete update of all such information which shall be disclosable pursuant to clause 14.3

14.5 At the time of providing the disclosed information pursuant to clauses 14.3 and 14.4, the Service Provider shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Service Provider.
14.6 The Customer may use the information it receives from the Service Provider pursuant to clauses 14.3 and 14.4 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Service Provider shall provide the Replacement Service Provider with such assistance as it shall reasonably request.

14.7 The Service Provider shall indemnify and keep indemnified and hold the Customer (both for themselves and any Replacement Service Provider) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or any Replacement Service Provider may suffer or incur as a result of or in connection with:

(a) the provision of information pursuant to clause 14; and

(b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Service Provider or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period; and

(c) any failure by the Service Provider or any Sub-Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Service Provider to comply with its duties under Regulation 13 of the Regulations; and

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Service Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Service Provider to the Customer and/or a Replacement Service Provider whose name is not included in the list of Returning Employees.

14.8 If the Service Provider becomes aware that the information it provided pursuant to clause 14.3 has become untrue, inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date information.

14.9 This clause 14 applies during the Contract Period and indefinitely thereafter.

14.10 The Service Provider undertakes to the Customer that, during the twelve months prior to the end of the Contract Period the Service Provider shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):

(a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any of the Staff (other than where such amendment or variation has previously been agreed between the Service Provider and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
(b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);

(c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Service Provider, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;

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

15. STAFFING SECURITY

15.1 The Service Provider shall comply with the Customer’s staff vetting procedures (where provided to the Service Provider) in respect of all Service Provider Staff employed or engaged in the provision of the Goods and/or Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Customer’s staff vetting procedures.

15.2 The Service Provider shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and/or Services to ensure compliance with the Customer’s staff vetting procedures.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other’s Pre-Existing Intellectual Property Rights.

16.2 The Service Provider shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Service Provider’s responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

16.3 With respect to the Service Providers obligations under the Contract, the Service Provider warrants and represents that:

16.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;

16.3.2 it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer’s Confidential Information (held in electronic form) owned by or under the control of, or used by the Customer;

16.4 The Service Provider shall during and after the Contract Period of the Contract indemnify and keep indemnified the Customer on demand in full from and against
all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:

16.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and

16.4.2 performance of the Service Provider’s responsibilities and obligations hereunder.

16.5 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Service Provider’s responsibilities and obligations hereunder.

16.6 If a claim or demand is made or action brought to which clause 16.3 and/or 16.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:

16.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services; or

16.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and

16.6.3 in relation to the performance of the Service Provider’s responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

16.7 **Customer Data**

16.7.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

16.7.2 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise expressly Approved by the Customer.

16.7.3 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.

16.7.4 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for
preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

16.7.5 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.

16.7.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer may:

16.7.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or

16.7.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.

16.7.7 If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.

16.8 Protection of Personal Data

16.8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in Schedule 8 of the Master Contract Schedule by the Customer and may not be determined by the Service Provider.

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

16.8.3 The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

16.8.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

16.8.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

16.8.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
16.8.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

16.8.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

16.8.4.1 process that Personal Data only in accordance with Schedule 8 of the Master Contract Schedule unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

16.8.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:

- the nature of the data to be protected;
- the harm that might result from a Data Loss Event;
- the state of technological development; and
- the cost of implementing any measures;

16.8.4.3 ensure that:

- the Service Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 8 of the Master Contract Schedule);

16.8.4.4 it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:

- are aware of and comply with the Service Provider’s duties under this clause;
- are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
- are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
16.8.4.4.1 have undergone adequate training in the use, care, protection and handling of Personal Data; and

16.8.4.5 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

16.8.4.5.1 the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;

16.8.4.5.1 the Data Subject has enforceable rights and effective legal remedies;

16.8.4.5.1 the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and

16.8.4.5.1 the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

16.8.4.6 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Service Provider is required by Law to retain the Personal Data.

16.8.5 Subject to clause 16.8.6, the Service Provider shall notify the Customer immediately if it:

16.8.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

16.8.5.2 receives a request to rectify, block or erase any Personal Data;

16.8.5.3 receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;

16.8.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

16.8.5.5 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; or
16.8.5.6 becomes aware of a Data Loss Event.

16.8.6 The Service Provider’s obligation to notify under clause 16.8.5 shall include the provision of further information to the Customer in phases, as details become available.

16.8.7 Taking into account the nature of the processing, the Service Provider shall provide the Customer with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under clause 16.8.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

16.8.7.1 the Customer with full details and copies of the complaint, communication or request;

16.8.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

16.8.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;

16.8.7.4 assistance as requested by the Customer following any Data Loss Event;

16.8.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner’s Office.

16.8.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:

16.8.8.1 the Customer determines that the processing is not occasional;

16.8.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

16.8.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

16.8.9 The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.

16.8.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.

16.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
16.8.11.1 notify the Customer in writing of the intended Sub-processor and processing;

16.8.11.2 obtain the written consent of the Customer;

16.8.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16 such that they apply to the Sub-processor; and

16.8.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

16.8.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.

16.8.13 The Service Provider may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

16.8.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Service Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

16.9 Security of Premises

16.9.1 The Customer shall be responsible for maintaining the security of the Customer’s Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Customer while on the Customer’s Premises and shall ensure that all Staff comply with such requirements.

16.9.2 The Customer shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

16.10 Confidentiality

16.10.1 Except to the extent set out in this clause 16.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

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

16.10.2 Clause 16.10.1 shall not apply to the extent that:

16.10.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information...
16.10.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

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

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

16.10.2.5 it is independently developed without access to the other Party's Confidential Information.

16.10.3 The Service Provider may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or 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.

16.10.4 The Service Provider shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

16.10.5 At the written request of the Customer, the Service Provider shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

16.10.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Service Provider is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

16.10.7 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider's Confidential Information (including the Management Information obtained under clause 7.2):

16.10.7.1 to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to 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 Contracting Authority;

16.10.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

16.10.7.3 for the purpose of the examination and certification of the Customer's accounts; or

16.10.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

16.10.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 16.10.7 is made aware of the Customer's obligations of confidentiality.

16.10.9 Nothing in this clause 16.10 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 IPR.

16.10.10 In the event that the Service Provider fails to comply with clause 16.6.1 to clause 16.6.6, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.

16.10.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

16.11 Freedom of Information

16.11.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

16.11.2 The Service Provider shall and shall procure that its Sub-Contractors shall:

16.11.2.1 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;

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

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

16.11.4 In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Customer.

16.11.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 16.10) the Customer may, acting in accordance with the Department of 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 Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and Services:

16.11.5.1 in certain circumstances without consulting the Service Provider; or

16.11.5.2 following consultation with the Service Provider and having taken their views into account,

provided always that where clause 16.11.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

16.11.6 The Service Provider shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

16.11.7 The Service Provider acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 16.11.5.

16.12 Transparency

16.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

16.12.2 Notwithstanding any other term of the Contract, the Service Provider hereby gives his consent for the Customer to publish the Contract in its
entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

16.12.3 The Customer may consult with the Service Provider to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

16.12.4 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

17. Warranties and Representations

17.1 The Service Provider warrants, represents and undertakes to the Customer that:

17.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

17.1.2 the Contract is executed by a duly authorised representative of the Service Provider;

17.1.3 in entering the Contract it has not committed any Fraud;

17.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

17.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;

17.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or 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 and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;

17.1.7 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;

17.1.8 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;

17.1.9 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 Service Provider 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 Service Provider's assets or revenue;

17.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

17.2 The Service Provider warrants represents and undertakes to the Customer that:

17.2.1 the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

17.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and/or Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

17.2.3 the Goods and/or Services are and will continue to be during the Contract Period:

17.2.3.1 of satisfactory quality; and

17.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer’s specifications and documentation;

17.2.4 in the three (3) Years prior to the Commencement Date:

17.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

17.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

17.2.4.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract; and

17.2.4.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

17.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Service Provider.

17.4 The Service Provider acknowledges and agrees that:
17.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

17.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

18. LIABILITIES

18.1 Liability

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

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

18.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;

18.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

18.1.1.4 any claim under clause 17.1;

18.1.1.5 any claim under the indemnity in clauses 11.2.5, 14, 16.4, in respect of a breach of clause 16.10; or

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

18.1.2 Subject to clause 18.1.4 and clause 18.1.5 the Service Provider shall on demand 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 late supply or non-supply, of the Goods and/or Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider 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 Service Provider, or any other loss which is caused directly by any act or omission of the Service Provider.

18.1.3 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
18.1.4 Subject always to clause 18.1.1 and clause 18.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:

18.1.4.1 all defaults resulting in direct loss to the property of the other Party shall in no event exceed ten million pounds (£10,000,000); and

18.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed ten million pounds sterling (£10,000,000).

18.1.5 Subject to clause 18.1.1, in no event shall either Party be liable to the other for any:

18.1.5.1 loss of profits;

18.1.5.2 loss of business;

18.1.5.3 loss of revenue;

18.1.5.4 loss of or damage to goodwill;

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

18.1.5.6 any indirect, special or consequential loss or damage.

18.1.6 The provisions of 18.1.1 shall not be taken as limiting the right of the Customer to recover as a direct loss:

18.1.6.1 any additional operational and/or administrative expenses arising from the Service Provider’s Default;

18.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider’s Default;

18.1.6.3 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 Service Provider; and

18.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Service Provider.

18.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider 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.
18.2 Insurance

18.2.1 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Service Provider, arising out of the Service Provider'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 Service Provider. Such insurance shall be maintained for the Contract Period.

18.2.2 The Service Provider shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.

18.2.3 The Service Provider shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.

18.2.4 The Service Provider shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of two million pounds sterling (£2,000,000) for each individual claim, or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period.

18.2.5 The Service Provider 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.

18.2.6 If, for whatever reason, the Service Provider 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 Service Provider.

18.2.7 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause 18.

18.2.8 The Service Provider shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind,
suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

18.3 **Taxation, National Insurance and Employment Liability**

18.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider 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.

19. **TERMINATION**

19.1 **Termination on insolvency**

19.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Service Provider where the Service Provider is a company and in respect of the Service Provider:

19.1.1.1 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; or

19.1.1.2 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); or

19.1.1.3 a petition is presented for its winding up (which is not dismissed within 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; or

19.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

19.1.1.5 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; or

19.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
19.1.1.7 being a "small company" within the meaning of section 82(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

19.1.1.8 any event similar to those listed in clause 19.1.1.1 to 19.1.1.7 occurs under the law of any other jurisdiction.

19.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:

19.1.2.1 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 Service Provider's creditors; or

19.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or

19.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

19.1.2.4 the Service Provider 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; or

19.1.2.5 a creditor or encumbrancer 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 Service Provider's assets and such attachment or process is not discharged within 14 days; or

19.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

19.1.2.7 the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

19.2 Termination on Change of Control

19.2.1 The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("Change of Control") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

19.2.1.1 being notified that a Change of Control has occurred or is planned or in contemplation; or
19.2.1.2 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.

For the purposes of clause 19.2.1 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

19.3 **Termination on Default**

19.3.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Service Provider if the Service Provider commits a Default and if:

19.3.1.1 the Service Provider has not remedied the Default to the satisfaction of the Customer within thirty (30) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

19.3.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or

19.3.1.3 the Default is a material breach of the Contract.

19.3.2 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Service Provider.

19.3.3 If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the period specified in clause 11.2, the Service Provider 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 11.3 (Recovery of Sums Due).

19.4 **Termination of Framework Agreement**

The Customer may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Framework Agreement is fully or partly terminated for any reason whatsoever.

19.5 **Termination on Financial Standing**

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the
financial standing and/or the credit rating of the Service Provider (as measured from the Commencement Date) which:

19.5.1 adversely impacts on the Service Provider's ability to supply the Goods and/or Services under this Contract; or

19.5.2 could reasonably be expected to have an adverse impact on the Service Provider's ability to supply the Goods and/or Services under this Contract.

19.6 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Service Provider commits a Default of clauses 26.1 to 26.5 or clause 26.7 (Records and Audit Access).

19.7 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Continuous Improvement and Benchmarking).

19.8 Partial Termination

If the Customer is entitled to terminate this Contract pursuant to this clause 19, it may (at its sole discretion) terminate all or part of this Contract.

19.9 Termination in compliance with Public Contracts Regulations 2015

The Customer may terminate Contracts where:

19.9.1 the Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;

19.9.2 the Service Provider has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or

19.9.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.
19.10 Termination on termination of the Mirror Framework

19.10.1 In the event that any Mirror Framework is terminated or otherwise expires, the Customer may elect to terminate this Contract by serving notice in writing with effect from the date specified in such notice.

20. CONSEQUENCES OF EXPIRY OR TERMINATION

20.1 Where the Customer terminates the Contract under clauses 19.3 (Termination on Default), 19.6 (Financial Standing), 19.7 (Audit), 19.8 (Benchmarking) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Service Provider the cost 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 clauses 19.3, 19.6, 19.7 and 19.8., no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.

20.2 On the termination of the Contract for any reason, the Service Provider shall:

20.2.1 immediately return to the Customer all Confidential Information, Personal Data and Customer’s Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;

20.2.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Service Provider with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Service Provider;

20.2.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer’s written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.

20.2.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 4.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);

20.2.5 transfer to the Customer and/or the Replacement Service Provider (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Service Provider and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Service Provider in respect of such Licensed Goods and/or contracts and/or any other items of relevance;

20.2.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or provide all such assistance and co-operation as the Customer may reasonably require;
20.2.7 return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and

20.2.8 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.

20.3 If the Service Provider fails to comply with clause 20.2.1 and 20.2.8, the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted agents or Sub-Contractors where any such items may be held.

20.4 Where the end of the Contract Period arises due to the Service Provider’s Default, the Service Provider shall provide all assistance under clause 20.2.5 and 20.2.8 free of charge. Otherwise, the Customer shall pay the Service Provider’s reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

20.5 NOT USED

20.6 Save as otherwise expressly provided in the Contract:

20.6.1 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 the time of such termination or expiry; and

20.6.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 16 (Intellectual Property Rights), 16.8 (Protection of Personal Data), 16.10 (Confidentiality), 16.11 (Freedom of Information), 18 (Liabilities), 20 (Consequences of Expiry or Termination), 25 (Prevention of Bribery and Corruption), 26 (Records and Audit Access), 27 (Prevention of Fraud), 31 (Cumulative Remedies), 37 (Conflicts of Interest), 39 (The Contracts (Rights of Third parties) Act 1999) and 42.1 (Governing Law and Jurisdiction).

21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

21.1 The Service Provider shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, Service Providers, professional advisors and consultants comply with this clause 21. Any such press announcements or publicity proposed under this clause 21.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,

21.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in
21.3 The Service Provider shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

22. ANTI-DISCRIMINATION

22.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

22.2 The Service Provider shall take all reasonable steps to secure the observance of clause 23.1 by all Staff employed in performance of this Contract.

22.3 The Service Provider shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other law, enactment, order or regulation.

22.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider’s performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Service Provider’s Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider’s Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

22.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or any other law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Service Provider, its agents or Sub-Contractors, or the Service Provider’s Staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.

22.6 The Service Provider must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

22.7 The Service Provider acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Service Provider shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact analysis by the Customer. The Service Provider shall
implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

23. HEALTH AND SAFETY

23.1 The Service Provider 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 Service Provider of any health and safety hazards which may exist or arise at the Customer’s Premises and which may affect the Service Provider in the performance of its obligations under the Contract.

23.2 While on the Customer’s Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

23.3 The Service Provider 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.

23.4 The Service Provider 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 Goods and/or Services under the Contract.

23.5 The Service Provider 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.

24. ENVIRONMENTAL REQUIREMENTS

24.1 The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy (where provided), 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.

25. PREVENTION OF BRIBERY AND CORRUPTION

25.1 The Service Provider shall not:

25.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

25.1.2 engage in and shall procure that all Service Provider’s Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and
25.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

25.2 The Service Provider warrants, represents and undertakes that it has not:

25.2.1 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and

25.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Contract;

25.3 The Service Provider shall:

25.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

25.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 25;

25.3.3 respond promptly to any of the Customer’s enquiries regarding any breach, potential breach or suspected breach of this clause 25 and the Service Provider shall co-operate with any investigation and allow the Customer to audit Service Provider’s books, records and any other relevant documentation in connection with the breach;

25.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Service Provider and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause 25. The Service Provider shall provide such supporting evidence of compliance as the Customer may reasonably request;

25.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Service Provider’s behalf from committing a Prohibited Act and shall enforce it where appropriate.

25.4 If the Service Provider, its Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:

25.4.1 this clause 25; or

25.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,
the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

25.5 Without prejudice to its other rights and remedies under this clause 25, the Customer shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from and against:

25.5.1 the amount of value of any such gift, consideration or commission; and

25.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 25.

26. RECORDS AND AUDIT ACCESS

26.1 The Service Provider shall keep and maintain for 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 Goods and/or Services provided under it, and the amounts paid by the Customer.

26.2 The Service Provider shall keep the records and accounts referred to in clause 26.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

26.3 The Service Provider shall afford the Customer and the Auditors access to the records and accounts referred to in clause 26.2 at the Service Provider’s premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:

26.3.1 to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Service Provider (including Sub-Contractors) of the Services;

26.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Service Provider;

26.3.3 to review the Service Provider’s compliance with the DPA in accordance with this Contract and any other Laws;

26.3.4 to review the Service Provider’s compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;

26.3.5 to review the Service Provider’s compliance with its security obligations set out in clause 16;

26.3.6 to review any books of account kept by the Service Provider in connection with the provision of the Service;

26.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;

26.3.8 to inspect the Customer’s assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of
ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or

26.3.9 to ensure that the Service Provider is complying with its obligations under this Contract.

26.4 The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.

26.5 The Service Provider shall provide such records and accounts (together with copies of the Service Provider’s published accounts) on request during the Contract Period and for a period of six (6) Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.

26.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services or supply of Goods save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

26.7 Subject to the Service Provider’s rights in respect of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable cooperation and assistance in relation to each audit, including:

26.7.1 all reasonable information requested by the Customer within the scope of the audit;

26.7.2 reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Goods and/or Services; and

26.7.3 access to the Staff.

26.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer’s reasonable costs incurred in relation to the audit.

27. PREVENTION OF FRAUD

27.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

27.2 The Service Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Service Provider or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
27.3 If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:

27.3.1 terminate the Contract with immediate effect by giving the Service Provider notice in writing; and/or

27.3.2 recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 27 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

28. TRANSFER AND SUB-CONTRACTING

28.1 The Service Provider shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval.

28.2 The Service Provider shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this clause 28, the Service Provider shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

29. FORCE MAJEURE

29.1 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 6 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

29.2 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Service Provider shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Service Provider is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

29.3 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 29.1 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.

29.4 If an event of Force Majeure event affects the Services, the Customer may direct the Service Provider to procure those Goods and/or Services from a third party Service Provider in which case the Service Provider will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
29.5 The Service Provider will not have the right to any payment from the Customer under this Contract where the Service Provider is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Service Provider to use a replacement Service Provider pursuant to sub-clause 29.4, then the Customer will pay the Service Provider (a) the Contract Price; and (b) the difference between the Contract Price and the new Service Provider’s costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Service Provider’s costs are greater than the Contract Price.

30. WAIVER

30.1 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.

30.2 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 40 (Notices).

30.3 A waiver by either Party 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.

31. CUMULATIVE REMEDIES

31.1 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.

32. FURTHER ASSURANCES

32.1 Each Party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

33. VARIATION

33.1 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

34. SEVERABILITY

34.1 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.

34.2 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 Service Provider shall immediately commence good faith negotiations to remedy such invalidity.
35. **MISTAKES IN INFORMATION**

35.1 The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Service Provider in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

36. **SERVICE PROVIDER’S STATUS**

36.1 At all times during the Contract Period the Service Provider shall be an independent contractor 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.

37. **CONFLICTS OF INTEREST**

37.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider 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 Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.

37.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 37.1 above arises or is reasonably foreseeable.

37.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider 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 Service Provider 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 either party.

37.4 This clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

38. **ENTIRE AGREEMENT**

38.1 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.

38.2 Each of the Parties acknowledges and agrees 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.

38.3 The Service Provider acknowledges that it has:

38.3.1 entered into the Contract in reliance on its own due diligence alone; and
38.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.

38.4 Nothing in clauses 38.1 and 38.2 shall operate to exclude Fraud or fraudulent misrepresentation.

38.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

39. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 A person who is not a Party to the Contract except ESPO, or the Trading Company as appropriate, in relation to its right to claim retrospective rebate from the Service Provider under the payment clause 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.

39.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 (CROTPA) shall apply to clause 14 to the extent necessary that any Former Service Provider and Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Former Service Provider and the Replacement Service Provider by the Service Provider under that clause 14 in its own right pursuant to clause 1(1) of CROTPA.

39.3 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more clauses of it.

40. NOTICES

40.1 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.

40.2 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 by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 40.3. 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, facsimile transmission or item of electronic mail.

40.3 For the purposes of clause 40.2, the address, email address of each Party shall be the address and email address set out in the Master Contract Schedule and/or any other Contract Document.

40.4 Either Party may change its address for service by serving a notice in accordance with this clause.
41. **LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION**

41.1 The Service Provider shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a general change in law.

41.2 The Parties acknowledge that during the Term of this Contract the local government structure in the Customer’s administrative areas may be subject to change. These administrative changes may give rise to the need for the Customer to terminate this Contract and/or seek its potential variation with any successor or assignee of the Customer. The Customer shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.

42. **DISPUTES AND LAW**

42.1 **Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

42.2 **Dispute Resolution**

42.2.1 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 level of the Customer’s Representative and the Service Provider’s Representative.

42.2.2 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.

42.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 42.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 42.2.5 unless:

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

42.2.3.2 the Service Provider does not agree to mediation.

42.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.

42.2.5 The procedure for mediation is as follows:

42.2.5.1 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 ten (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 the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;

42.2.5.2 the Parties shall within 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 mediation provider appointed by CEDR to provide guidance on a suitable procedure;

42.2.5.3 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;

42.2.5.4 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;

42.2.5.5 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

42.2.5.6 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.
1. AMENDMENTS TO THE CALL-OFF TERMS

The following Clauses shall be deemed to be added to the Call-Off Terms:

- 43 – Security Requirements and Plan
- 44 – Offshoring

43. SECURITY REQUIREMENTS AND PLAN

43.1 This Paragraph 43 covers;

- 43.1.1 Principles of security for the Service Provider ICT system, derived from the Security Policy, including without limitation principles of physical and information security;
- 43.1.2 The creation of the Security Plan;
- 43.1.3 Audit and testing of the Security Plan;
- 43.1.4 Conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
- 43.1.5 Breaches of Security.

43.1.6 Security provisions with which the Service Provider shall comply in providing the services relevant to this Contract.

43.2 Principles of Security

43.2.1 The Service Provider acknowledges that the Customer places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Service Provider ICT system. The Service Provider also acknowledges the confidentiality of the Customer’s Data.

43.2.2 The Service Provider shall be responsible for the security of the Service Provider ICT system and shall at all times provide a level of security which;

- 43.2.2.1 is in accordance with Good Industry Practice and Law;
- 43.2.2.2 complies with the Security Policy;
- 43.2.2.3 meets any specific security threats to the Service Provider System; and
- 43.2.2.4 complies with ISO/IEC27002 and ISO/IEC27001 standards in accordance with paragraph 43.5;
43.2.5 meets the requirements of the Cyber Essentials Scheme, unless deemed out of scope for this requirement.

43.2.3 Without limiting paragraph 43.2.2, the Service Provider shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:

43.2.3.1 loss of integrity of Customer Data;
43.2.3.2 loss of confidentiality of Customer Data;
43.2.3.3 unauthorised access to, use of, or interference with Customer Data by any person or organisation;
43.2.3.4 unauthorised access to network elements and buildings;
43.2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Customer Data; and
43.2.3.6 loss of availability of Customer Data due to any failure or compromise of the Services; and
43.2.3.7 loss of confidentiality, integrity and availability of Customer Data through Cyber/internet threats.

43.3 Security Plan

43.3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period which will be approved by the Customer, tested, periodically updated and audited in accordance with this Clause 43.

43.3.2 A draft Security Plan provided by the Service Provider as part of its Tender is included on the DWP procurement portal.

43.3.3 Within twenty (20) Working Days after the Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision) of this Clause 43, the Service Provider will prepare and deliver to the Customer for Approval the full and final Security Plan which will be based on the draft Security Plan.

43.3.4 If the Security Plan is approved by the Customer it will be adopted immediately. If the Security Plan is not approved by the Customer the Service Provider shall amend it within 10 Working Days of a notice of non-Approval and re-submit for Approval. The Parties will use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 Dispute Resolution. No Approval to be given pursuant to this paragraph 43.3.4 of this Clause 43 may be unreasonably withheld or delayed. However, any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 43.3.1 to 43.3.8 of this Clause 43 shall be deemed to be reasonable.
43.3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

43.3.5.1 the provisions of this Contract; this Clause 43 (including the principles set out in paragraph 2 of this Clause 43);

43.3.5.2 ISO/IEC27002 and ISO/IEC27001;

43.3.5.3 the data protection compliance guidance produced by the Customer.

43.3.6 The references to standards, guidance and policies set out in paragraph 43.3.5 of this Clause 43 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

43.3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Service Provider should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Service Provider which provision the Service Provider shall be required to comply with.

43.3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.

43.3.9 Where the Security Plan references any document which is not in the possession of the Customer, a copy of the document will be made available to the Customer upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Service Provider and the Customer engaged in the Services and shall not reference any other documents which are not either in the possession of the Customer or otherwise specified in this Clause 43.

43.3.10 The Security Plan will be fully reviewed and updated by the Service Provider annually, or from time to time to reflect:

43.3.10.1 emerging changes in Good Industry Practice;

43.3.10.2 any change or proposed change to the Service Provider ICT system, the Services and/or associated processes; and

43.3.10.3 any new perceived or changed threats to the Service Provider ICT system.

43.3.10.4 a reasonable request by the Customer.

43.3.11 The Service Provider will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Customer.

43.3.12 Any change or amendment which the Service Provider proposes to make to the Security Plan as a result of a Customer request or change to the ITT Part A (The
43.4 Audit and Testing

43.4.1 The Service Provider shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.

43.4.2 The Customer shall be entitled to send the Customer’s Representative to witness the conduct of the Security Tests. The Service Provider shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.

43.4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer shall be entitled at any time and without giving notice to the Service Provider to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Service Provider's compliance with and implementation of the Security Plan. The Customer may notify the Service Provider of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Service Provider shall be granted relief against any resultant under-performance for the period of the tests.

43.4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 of this Clause 43 reveals any actual or potential security failure or weaknesses, the Service Provider shall promptly notify the Customer of any changes to the Security Plan (and the implementation thereof) which the Service Provider proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 3.12 of this Clause 43, the Service Provider shall implement such changes to the Security Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Customer. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

43.5 Compliance with ISO/IEC 27001

43.5.1 If certain parts of the Security Policy do not conform to good industry practice as described in ISO27002 and, as a result, the Service Provider reasonably believes that its certification to ISO 27001 would fail in regard to these parts, the Service Provider shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement to certification in respect of the relevant parts]

43.5.2 The Service Provider shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly
provide to the Customer any associated security audit reports and shall otherwise notify the Customer of the results of such security audits.

43.5.3 If it is the Customer's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Service Provider, then the Customer shall notify the Service Provider of the same and give the Service Provider a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Service Provider does not become compliant within the required time, then the Customer has the right to obtain an independent audit against these standards in whole or in part.

43.5.4 If, as a result of any such independent audit as described in paragraph 43.5.3 of this Clause 43 the Service Provider is found to be non-compliant with the principles and practices of ISO 27001 then the Service Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

43.6 Breach of Security

43.6.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

43.6.2 Upon becoming aware of any of the circumstances referred to in paragraph 43.6.1 of this Clause 43, the Service Provider shall;

43.6.2.1 immediately take all reasonable steps necessary to;

43.6.2.1.1 remedy such breach or protect the Service Provider ICT system against any such potential or attempted breach or threat; and

43.6.2.1.2 prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Service Provider under this Contract, then the Service Provider shall be entitled to refer the matter to the variation procedure (Clause 33)

43.6.3 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as may be specified by the Customer from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

43.7 Customer Data relevant to the Contract

43.7.1 The Specification will outline the services to be provided by the Service Provider, including the type of Customer Data involved.

43.7.2 The majority of information that is created or processed by the public sector is described as 'Official'. This includes routine business operations and services,
some of which could have damaging consequences if lost, stolen or published in the media.

43.8 Accreditation

43.8.1 Where a system is being used to deliver the Services it may be appropriate to conduct security accreditation.

43.8.2 The DWP Security Accreditation Team may undertake an accreditation of the service where the Service Provider shall provide appropriate accreditation evidence to DWP upon request throughout the lifecycle of the Contract.

43.8.3 Where security accreditation is required the Service Provider must ensure that the service in scope remains accredited throughout the Contract Period and that there is an agreed accreditation assurance plan in place supporting the DWP deployed service.
Appendix A – DWP Security Policies and Standards

1. The Department for Work and Pensions (referred to as DWP or Customer in this Clause 43) treats information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data and Special Categories of Personal Data for which DWP is the Data Controller.

2. In order to protect Customer Data, Personal Data and Special Categories of Personal Data appropriately, the Service Provider must provide the security measures and safeguards appropriate to the nature and use of such information. The Service Provider must comply, and be able to demonstrate compliance, with the relevant DWP policies and standards.

3. The main DWP policies include:
   - Information Security Policy
   - Physical Security Policy
   - Acceptable Use Policy

   The above policies can be found at: gov.uk

4. The Service Provider must appoint a named officer who will act as a first point of contact with DWP for security issues. In addition all Staff, with access to the Customer ICT System, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.

5. The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.

6. Whilst DWP policies are written for internal DWP requirements the Service Provider must implement appropriate arrangements which ensure that Customer Data and any DWP assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.

7. It is the Service Provider’s responsibility to monitor compliance of its Staff including its Sub-contractors and provide assurance to DWP, as requested regarding such compliance.

8. Failure to comply with any of these DWP Policies and Standards could result in termination of Contract by DWP.

9. The following are some key basic requirements that all Service Providers must apply:

10. **Personnel Security**

10.1 Staff recruitment by the Service Provider must be in accordance with government requirements for pre-employment checks including Baseline Personnel Security Standard.
10.2 The Service Provider must ensure that its Staff are trained and made aware of DWP security and any specific Contract requirements.

11. **Secure Information Handling and Transfers**

11.1 The Service Provider shall ensure the physical and electronic handling, processing and transferring of Customer Data, Personal Data and Special Categories of Personal Data and Special Categories of Personal Data, including secure access to systems and the use of encryption, where appropriate, is carried out in accordance with this Contract.

12. **Portable Media**

12.1 The Service Provider shall use encrypted laptops and encrypted storage devices and other removable media when handling Customer Data, Personal Data and Special Categories of Personal Data.

13. **Offshoring**

13.1 Transfer of Personal Data and Special Categories of Personal Data outside of the European Economic Area or International Organisation by the Service Provider shall require the Approval of the Customer.

14. **Physical Security**

14.1 The Service Provider shall keep secure DWP premises it uses and control access to DWP premises to those that have Approval to enter DWP premises.

15. **Security Incidents**

15.1 The Service Provider shall include identification, managing and agreed reporting procedures for actual or suspected security breaches. Reporting of breaches by the Service Provider relating to Personal Data and/or Special Categories of Personal Data shall be carried in accordance with clause E2.
44.1. Supply of the Services

44.1.1 While not in anyway limiting any other provision of this Contract, in delivering the Services the Service Provider and any of its sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

44.2. Protection of Information

44.2.1 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Service Provider and any of its sub-contractors, shall not offshore Customer Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Customer, and where the Customer gives consent, the Service Provider shall comply with any reasonable instructions notified to it by the Customer in relation to the Customer Data in question.

44.2.2 Where the Customer has given its prior written consent to the Service Provider to process, host or access Customer Data from premises outside the United Kingdom (in accordance with 2.1 of the Contract):

44.2.2.1 the Service Provider must notify the Customer (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Customer Data;

44.2.2.2 the Service Provider shall take all necessary steps in order to prevent any access to, or disclosure of, any Customer Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.”

Definitions

“DWP Offshoring Policy” means the Customer’s policy and procedures in relation to hosting or accessing the Customer ICT System or official information outside of the UK including Landed Resources as advised to the Service Provider by the Customer from time to time.

“Landed Resources” means when the Service Provider or its sub-contractor causes foreign nationals to be brought to the United Kingdom, to provide the Services.