

THE CUSTOMER

- and -

THE SUPPLIER

CALL-OFF TERMS

relating to

MANAGED LEARNING SERVICES

CONTRACT REF

[INSERT CUSTOMER REFERENCE NUMBER]

FORM OF CONTRACT

This contract is made on theday
of.....20[XX]

BETWEEN

- (1) [insert the name of the Contracting Authority] whose principal place of business is at [principal office address] (the “Customer”); and

If the Supplier is not a company registered at Companies House then the Customer will need to amend this wording to reflect the details of the organisation that it will be entering into the call-off contract with.

- (2) [insert the Supplier’s name] which is a [LLP/company/etc] registered in [England and Wales/Scotland/Northern Ireland/etc] under registration number [registration number] and whose [registered/principal] office is at [registered/principal office address]) (the “Supplier”)

WHEREAS

- (A) ESPO placed a Tender Notice 2025/S 000-051022 on 22 August 2025 on the central digital platform operated pursuant to section 95(4) of the PA23 seeking expressions of interest from providers of Managed Learning Services to Customers as identified in the Tender Notice under a framework arrangement.
- (B) Following receipt of expressions of interest, ESPO issued an Invitation to Tender for the provision of the Goods and/or Services.
- (C) On the basis of the Tender, ESPO selected the Supplier to enter into a framework agreement, to provide the Goods and/or Services to Contracting Authorities who will place orders in accordance with the Framework Agreement.
- (D) The Framework Agreement sets out the award and ordering procedure for Goods and/or Services, the main terms and conditions for Contract which Customers may conclude and the obligations of the Supplier under the Framework Agreement.
- (E) The Customer is a Contracting Authority and is identified in the Tender Notice as a potential purchaser under the Framework Agreement. The Customer wishes to have made available to it the following goods and/or services namely Managed Learning Services pursuant to the ESPO Framework Agreement reference 383_25.
- (F) The Supplier agrees to provide the Goods and/or Services to the Customer on the terms set out in this Contract and pursuant to the Framework Agreement.
- (G) The Customer and the Supplier enter into this Contract pursuant to the Framework Agreement, and this Contract constitutes a call-off made between them under that Agreement.

WHEREAS

NOW IT IS AGREED THAT

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1. The Supplier will provide the goods and/or services in accordance with the terms of this call-off contract (reference number [insert customer reference number] and Contract Documents.
2. The Customer will pay the Supplier the amount due in accordance with the terms of the call off agreement and the Contract Documents.
3. The following documents comprise the **Contract Documents** and shall be deemed to form and be read and construed as part of this Agreement:
 - This Form of Contract
 - The Master Contract Schedule
 - the Call-Off Terms which are either set out below or in a separate form which has been agreed by the Parties and signed by each of them
 - The documents as listed ~~delete whichever is not applicable~~ [below/in the Contract Document Schedule reference [insert reference number]]
 - The Customer's further competitive selection process Invitation to Tender
 - ITT Response

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This call-off Contract has been entered into on the date stated at the beginning of it.

If the call-off contract is being executed under hand then use the following wording

Signed for and on behalf of [INSERT CUSTOMER’S NAME] by:
Signature:
Name:
Position/Title: Authorised Officer] [Director/Member]
Date:

Signed for and on behalf of [INSERT NAME OF SUPPLIER] by:
Signature:
Name:
Position/Title: [Director/Member]
Date:

If the call-off contract is being executed as a deed then use the following wording

EXECUTED AS A DEED BY THE CUSTOMER

by affixing the common seal of

[INSERT NAME OF CUSTOMER]

in the presence of:-

..... [Authorised Officer/Director/Member]

EXECUTED AS A DEED BY THE SUPPLIER

by affixing the common seal of

[INSERT NAME OF SUPPLIER]

in the presence of: -

..... [Director/Member]

..... [Director/Secretary]

OR

EXECUTED AS A DEED BY

[INSERT SUPPLIER’S NAME] **acting by**

[INSERT NAME OF FIRST DIRECTOR], **a director and**

[INSERT NAME OF SECOND DIRECTOR/SECRETARY],

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..... Director

..... [Director/Secretary]

EXECUTED AS A DEED BY

[NAME OF LLP] acting by

[NAME OF MEMBER], a member and

[NAME OF MEMBER], a member

OR

EXECUTED AS A DEED BY

[NAME OF LLP] acting by

[NAME OF MEMBER], a member, in the presence of:

[NAME OF WITNESS]

[OCCUPATION OF WITNESS]

[ADDRESS OF WITNESS]

..... Member

..... Witness

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MASTER CONTRACT SCHEDULE

This document relates to and forms part of the Call-Off Terms

(Document Reference [insert the customer reference number])

(ESPO Framework Reference 383_25

CUSTOMER DRAFTING NOTE The parts marked with yellow and/or square brackets is suggested optional drafting the parties may wish to include in this contract to reflect the specific project requirements. For further information regarding the scope of amendments to this template Call Off Contract permitted under the PA23 following (i) a call off without a competitive selection process or (ii) a further competitive selection process, please see section 8 of this Master Contract Schedule.

1. TERM

Commencement Date

[DD Month YYYY]

Insert the date on which the agreement for the supply of the Goods and/or Services is to commence.

Expiry Date

[DD Month YYYY]

Insert the date on which the Initial Term of the Contract is to expire.

Extension Period

[months/years]

Insert details of the extension period

There shall be no more than Extension Periods.

2. GOODS AND/OR SERVICES REQUIREMENTS

Goods required

[]

Include a description of the Goods (including by reference to the Lot or Lots) and delivery requirements and if available include reference to a specification which can be attached to this Master Contract Schedule. In the event that the Goods specification or requirements are particularly detailed or complex, consider setting out this information in a separate schedule. Details of the Goods listed above can be found in schedule 1 of the Framework Agreement.

Services and Deliverables required

[]

Include a description of the Services (including by reference to the Lot or Lots) together with any Deliverables and delivery requirements and if available include reference to a specification which can be attached to this Master Contract Schedule. In the event that the Services specification or requirements are particularly detailed or complex, consider setting out this

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information in a separate schedule. Details of the Services listed above can be found in schedule 1 of the Framework Agreement.

Performance/Delivery Location/Premises

[]

Include details of where the Goods will be installed/Services performed. Include details of any access conditions and site restrictions include a site plan if necessary if not covered already in a specification or any other Contract Document.

Standards

Quality Standards

[]

Technical Standards

[]

Insert the appropriate standards above that the Goods and/or Services will be required to comply with. Details of technical standards can be found in clause 13 of the Framework Agreement. Any specific quality standards should also be set out above unless already incorporated in any specification or other Contract Document.

Disaster Recovery and Business Continuity

[]

Additionally, consider the impact on goods and/or services should you invoke your own Disaster Recovery and Business Continuity Plan. Details should be provided if appropriate. You should satisfy yourself that the content of clause 6 is sufficient. If not, then include any additional requirements here.

3. SUPPLIER SOLUTION

Supplier Solution

[]

Insert details of the Supplier's response. If this is not described here, then it needs to be included in another Contract Document listed in the Form of Contract.

Key Personnel of the Supplier to be involved in the provision of the Goods, Services and Deliverables

[]

Insert details of the Supplier's project or account manager and any other key members of the Supplier's team.

Supplier's inspection of the Premises and Infrastructure (where relevant)

[]

If clause 10 has not been included within the Call-Off terms (because it is not appropriate for the Goods and/or Services being provided under the Contract) then this section must be deleted. If clause 10 has been left in the Call-Off terms then insert any issues raised by the Supplier in respect of any aspects of the Premises or Infrastructure being unsuitable for the

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provision of the Goods and/or Services in line with clause 10 and any action which is to be taken in respect thereof.

4. PERFORMANCE OF THE GOODS AND/OR SERVICES AND DELIVERABLES

Implementation Plan and Milestones or e.g. delivery schedule (including dates for completion and/or delivery)

Consider what Milestones should be inserted into the table below, together with associated Deliverables and what the dates for achievement of those Milestones should be. Also consider whether Delay Payments should be linked to the delivery of certain Milestones. If so, this will need to be tied into clause 11 (Payment). You need to specify in the column below what period of time do the Delay Payments apply to – every hour, day, week or whatever.

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)	Delay Payments

Critical Service Failure

(i) In relation to the required [insert description/name of Goods] a Critical Service Failure shall mean a delay in servicing the demand for [insert the number of Goods named ordered] ordered by the Customer in excess of 24 consecutive hours during [Normal Business Hours/Working Days] more than once in any consecutive [three (3) Month period] or more than [three times in any consecutive twelve (12) Month period].

The default period is three Months if less than three Months is required then an alternative period should be inserted above.

(ii) In relation to the [insert description of the Service] a Critical Service Failure shall mean a loss of [two (2)] or more [consecutive hours] during Normal Business Hours) for more than 24 such hours accumulated in any consecutive three (3) Months, or 48 such hours in any consecutive twelve (12) Months.

Clause 9.1 provides you with a right to terminate the Contract if a critical service failure occurs. It is intended that the definition of critical service failure should link to a specified threshold of service level performance. The intention is to provide certainty over what level of service would trigger a termination right. If you wish to include such a concept, then the definition above should be populated with relevant thresholds.

Monitoring

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[]
Include details of how you intend to monitor the Supplier's performance e.g. reporting, review meetings etc.

Management Information
Management Information to be provided in accordance with clause 7 of the Call-Off Terms on [insert date/ Month for each submission]
[]
Describe the Management Information required by you and the basis agreed by the Supplier in terms of production.

5. CUSTOMER RESPONSIBILITIES

Customer's Responsibilities (where appropriate)
[]
Include details of any specific requirements/responsibilities on you for example, the granting of access to the relevant site, provision of a telephone line etc. You should consider whether you want to include any specific mechanisms to deal with the consequences of a failure by you to comply with its responsibilities e.g. the Supplier is not able to terminate due to your temporary failure but will be given extra time to fulfil the obligations.

Customer's equipment (where appropriate)
[]
Insert details of any equipment that you are responsible for providing.

6. CHARGES AND PAYMENT

Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS)
[]
Insert details or a reference to the Contract Document which specifies the Contract Charges, payment profile and method of payment. This should not be substantially or materially different from the Charging Structure set out in schedule 2 to the Framework Agreement. Consider whether payments should be staged and linked to the achievement of particular Milestones.

7. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information:
[]
Include details of any Commercially Sensitive Information identified by the Supplier and the duration it should be confidential for. This will assist the Customer in respect of compliance with Freedom of Information Act (FOIA), the Environmental Information Regulations 2004 (EIR) and the Code of Practice on Access to Government Information.

8. AGREED AMENDMENTS TO THE CALL-OFF TERMS

Where the Contract is awarded by Call-Off without further competitive selection:

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Where a Contract has been awarded through the Call-Off without further competitive selection procedure under the Framework Agreement, the parties may **not** amend the **core terms** in the template Call-Off Terms. The core terms include, for example, deliverables (e.g. the basic requirements regarding what the supplier has to deliver under the call-off contract, such as compliance with the Customer’s requirements the Supplier’s framework tender, standards, policies and timeliness) warranties, charges and pricing mechanism, record keeping, indemnities, termination provisions, variation mechanism. For further information, please consult the Cabinet Office Guidance at <https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-frameworks-html> or seek your own legal advice. ESPO cannot provide further guidance regarding what constitutes a core term.

Where a provision in these Call Off Terms is indicated as optional by square brackets and/or yellow colouring, the provision is not such a core term of the Call-Off Terms.

All provisions of the Call-Off Terms are core terms and may not be amended, except as follows.

The following clauses are presented in square brackets and/or yellow highlighting and may be deleted only where they are not applicable to the Goods and or/Services as described in section 2 of this Master Contract Schedule:

CLAUSE 10.[PREMISES/[NOT USED] and corresponding 20.7

Clause 12.[KEY PERSONNEL/NOT USED]

Clause 14.[TUPE/NOT USED] and corresponding 18.1.1.3 and 39.2

Where any of the above clauses are applicable, they shall apply as drafted and shall be treated as core terms.

Where the Contract is awarded following further competitive selection process:

Where a further competitive selection process has been conducted under the Framework Agreement, the Parties may agree to amend the Call-Off Terms, including any core terms.

Subject to the above, the parties may list below the details of any amendments to the Call-Off Terms that have been agreed between the Customer and the Supplier.

The following amendments are made to the Call-Off Terms:

Example:

1. Replace clause [x.x] with the following wording ["..."]

9. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. INTRODUCTION

The Supplier shall comply with any further written instructions with respect to processing by the Customer.

Any such further instructions shall be incorporated into this section 9 of the Master Contract Schedule.

If the Customer wishes the Supplier to perform any processing of personal data on the Customer’s behalf, the Customer should complete the details of that processing in the second column of this table to assure itself of compliance with data protection legislation.

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Description	Details
Subject matter of the processing	This should be a high level, short description of what the processing is about i.e. its subject matter.
Duration of the processing	Clearly set out the duration of the processing, including dates.
Nature and purposes of the processing	<p>Be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include; employment processing, statutory obligation, recruitment assessment etc.</p>
Type of Personal Data	Examples here include; name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.
Categories of Data Subject	Examples here include; Staff (including volunteers, agents and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc.
Plan for return and destruction of the data once the processing is complete unless requirement under law to preserve that type of data.	Describe how long the data will be retained for, how it will be returned or destroyed.

10. PERSONAL DATA UNDER THE JOINT CONTROL OF THE PARTIES

The following section 10 applies to Personal Data under the Joint Control of the Parties as described in clause 16.9.15 of this Contract.

1. The [Parties/Customer/Supplier] shall be responsible for the provision of information to Data Subjects as detailed in GDPR Article 13 (Information to be provided where personal data are collected from the data subject).
2. The [Parties/Customer/Supplier] shall be responsible for the provision of information to Data Subjects as detailed in GDPR Article 14 (Information to be provided where personal data have not been obtained from the data subject).
3. The [Parties/Customer/Supplier] shall be responsible for responding to any request for information from a Data Subject under GDPR Article 15 (Right of access by the data subject).

4. The [Parties/Customer/Supplier] shall be responsible for responding to and rectifying any request for rectification from a Data Subject under GDPR Article 16 (Right to rectification).
5. The [Parties/Customer/Supplier] shall be responsible for responding to and erasing any request for the right to erasure from a Data Subject under GDPR Article 17 (Right to erasure (right to be forgotten)).
6. The [Parties/Customer/Supplier] shall be responsible for responding to and restricting any request for restriction of processing from a Data Subject under GDPR Article 18 (Right to restriction of processing).
7. The [Parties/Customer/Supplier] shall be responsible for notifying any rectification or erasure of personal data or restriction of processing carried out in accordance with GDPR Articles 16, 17 and 18 to each recipient to whom the personal data have been disclosed in accordance with GPR Article 19 (Notification obligation regarding rectification or erasure of personal data or restriction of processing).
8. The [Parties/Customer/Supplier] shall be responsible for responding to and porting any request for data portability from a Data Subject under GDPR Article 20 (Right to data portability).
9. The [Parties/Customer/Supplier] shall be responsible for responding to and complying with any objection from a Data Subject under GDPR Article 21 (Right to object).
- 10.The [Parties/Customer/Supplier] shall be responsible for ensuring a Data Subject is not subject to a decision based solely on automated processing, including profiling which causes legal effects or significant effects on the Data Subject and shall comply with GDPR Article 22 (Automated individual decision-making, including profiling).
- 11.The [Parties/Customer/Supplier] shall be responsible for notifying the supervisory authority (Information Commissioners Office) and the Data Subject of any personal data breach in accordance with GDPR Article 33 (Notification of a personal data breach to the supervisory authority) and Article 34 (Communication of a personal data breach to the data subject).
- 12.Each Party shall maintain a record of its processing activities under its responsibility in accordance with GDPR Article 30 (Records of processing activities).

Paragraph 13 is only applicable where the processing is likely to result in a high risk to the rights and freedoms of natural persons. If this is not the case it can be deleted.

- 13.The [Parties/Customer/Supplier] shall be responsible for carrying out a data protection impact assessment in accordance with GDPR Article 35 (Data protection impact assessment) and Article 36 (Prior consultation).
- 14.The Parties agree that the [Customer/Supplier] shall be the point of contact for Data Subjects.

Guidance Note:

The Parties' attention is drawn to the various guidance notes in this document and separate model Goods and/or Services guidance notes. Before any Order is placed or Contract signed,

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the Parties should ensure that they have read the guidance notes, taken any actions necessary and then delete the guidance notes from this document. The guidance is not exhaustive and has been included to assist the Parties in completing the Order/Contract with sufficient detail. However, it is each Party's responsibility to ensure that the Order/Contract contains all required information and obtain any necessary professional advice prior to conclusion of the Order/Contract.

CALL-OFF TERMS

Contents

Customers are reminded to update the below contents table upon completion of this template

FRAMEWORK SCHEDULE 3 – FORM OF CONTRACT AND CALL-OFF TERMS	0
1. GENERAL PROVISIONS.....	15
2. DUE DILIGENCE	28
3. CONTRACT PERIOD	29
4. SUPPLY OF GOODS AND/OR SERVICES	29
5. [CUSTOMER’S WARRANTY/NOT USED].....	33
6. DISASTER RECOVERY AND BUSINESS CONTINUITY	33
7. MONITORING OF CONTRACT PERFORMANCE	33
8. DISRUPTION	34
9. SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS	34
10. [PREMISES/[NOT USED].....	36
11. PAYMENT AND CONTRACT CHARGES	38
12. [KEY PERSONNEL/NOT USED]	41
13. SUPPLIER’S STAFF.....	42
14. [TUPE/NOT USED]	43
15. STAFFING SECURITY	46
16. INTELLECTUAL PROPERTY RIGHTS, DATA, ETC.....	46
17. WARRANTIES AND REPRESENTATIONS	57
18. LIABILITIES	60
19. TERMINATION	63
20. CONSEQUENCES OF TERMINATION OR EXPIRY	67
21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES	69
22. ANTI-DISCRIMINATION	70
23. HEALTH AND SAFETY	71
24. ENVIRONMENTAL REQUIREMENTS, GHG EMISSIONS, ETC.	71
25. PREVENTION OF BRIBERY AND CORRUPTION.....	72
26. RECORDS AND AUDIT ACCESS	74
27. PREVENTION OF FRAUD	75
28. TRANSFER AND SUB-CONTRACTING.....	76
29. FORCE MAJEURE	77
30. WAIVER.....	77
31. CUMULATIVE REMEDIES	78

Guidance contained in this document is intended for use by ESPO employees; however, it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

32.	FURTHER ASSURANCES.....	78
33.	VARIATION	78
34.	SEVERABILITY	78
35.	MISTAKES IN INFORMATION.....	78
36.	SUPPLIER’S STATUS	78
37.	CONFLICTS OF INTEREST	79
38.	ENTIRE AGREEMENT AND COUNTERPARTS	79
39.	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	80
40.	NOTICES.....	80
41.	LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION	81
42.	DISPUTES AND LAW	81
	SCHEDULE 1	83
	SCHEDULE 2	87

1. GENERAL PROVISIONS

1.1 Definitions

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

- "Adjustment Date"** means the date (if any) provided for under clause 11 of this Contract;
- "Affiliate"** means in relation to a body corporate, any other person 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, which may be subject to such conditions that the Customer may in writing require, including the payment, in advance or otherwise, to the Customer of a reasonable sum in respect of time and expense which may be incurred by the Customer in considering the matter; such consent and conditions may be at the Customer's absolute discretion, except consent must not be withheld or conditions must be reasonable where it is stated in this Contract that consent must not be unreasonably withheld; and "Approve" and "Approved" shall be construed accordingly;
- "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 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 Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
"Connected Person"	has the meaning given in paragraph 45, Part 3, Schedule 6 of the PA23;
"Continuous Improvement Plan"	means a plan for improving the provision of the Goods and/or Services and/or reducing the Contract Charges produced by the Supplier pursuant to schedule 6 of the Framework Agreement;
"Contract"	means the contract entered into by the Customer and the Supplier 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 Charge(s)"	means the price(s) (exclusive of any applicable VAT), payable to the Supplier by the Customer under this Contract, as set out in the Master Contract Schedule and/or any other Contract Document, for the full and proper performance by the Supplier of its obligations under this Contract less any Service Credits;
"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: <ul style="list-style-type: none">a) the Expiry Date or as extended pursuant to clause 3 (Contract Period); orb) such earlier date of termination of this Contract in accordance with Law or the provisions of this Contract;
"Contract Year"	means each consecutive twelve (12) Month period during this Contract Period commencing on the Commencement Date;
"Contracting Authority"	means any contracting authority as defined in section 2 of the PA23;
"Control"	means control as defined in section 1124 of the Corporation Tax Act 2010 and " Controls " and " Controlled " shall be interpreted accordingly

"Controller"	has the meaning set out under the Data Protection Legislation;
"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 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: <ul style="list-style-type: none">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:<ul style="list-style-type: none">i) are supplied to the Supplier by or on behalf of the Customer; orii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; orb) any Personal Data for which the Customer is the 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 Supplier of its obligations under this Contract and including 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 where the Goods are to be delivered, installed and/or used and/or Services are to be performed on the terms set out in this Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Master Contract Schedule and/or any other Contract Document;
"Customer's Invitation to Tender"	has the meaning given to it in the definition of ITT Response in this clause;
"Customer's Representative"	means the representative appointed by the Customer from time to time in relation to this 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 suppliers to the Customer, including all IPRs belonging to them, 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 Supplier 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 all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority which are applicable to a Party;
"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"	has the meaning set out under the Data Protection Legislation;
"Data Subject"	has the meaning set out under the Data Protection Legislation;
"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;
"Debarment List"	means the list of suppliers referred to in section 62 of the PA23;
"Default"	means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement in connection with or in relation to the subject-matter of this Contract;
"Delay Payments"	means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule;
"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 delivered or, if required by this Contract, installed by the Supplier in accordance with this Contract and "Deliver" and "Delivered" shall be construed accordingly;

"Discretionary Exclusion Ground"	means any of the circumstances listed in Schedule 7 of the PA23;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 42.2;
"Employment Checks"	means the pre-appointment checks that are required by Law and applicable guidance, including verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
"EIR"	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, legislation and other Law relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) and 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;
"Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Contract which do not include the Goods and/or Services;
"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; being the Contracting Authority that established the Framework Agreement.
"Excludable Supplier"	means a Supplier where a Discretionary Exclusion Ground applies to that Supplier or a Sub-Contractor;
"Excluded Supplier"	means a Supplier where a Mandatory Exclusion Ground applies to that Supplier or a Sub-Contractor;
"Expiry Date"	means the date expressed to be the Expiry Date as 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 Supplier 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 act, event, omission, happening, non-happening or cause not within an Affected Party's reasonable control affecting the performance by that Party of its obligations arising from:

- a) epidemic or pandemic;
- b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of government, local government or Regulatory Bodies;
- d) fire or flood;
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - i) any industrial dispute relating only to the Supplier or the Sub-Contractor; 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;

"Framework Agreement"

the framework agreement for the provision of Goods and/or Services between ESPO and the Supplier.

"Fraud"

means any offence in respect of a fraudulent act or omission, defrauding, attempting to defraud or a conspiracy to defraud in relation to this Contract and/or any other contract with the Customer under: (i) the Fraud Act 2006; (ii) other Laws or (iii) at common law;

"GDPR"

means the General Data Protection Regulation (Regulation (EU) 2016/679) as it forms part of the Law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;

"GHG Emissions"	means emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended from time to time including carbon dioxide (CO ₂), methane (CH ₄), nitrous oxide (N ₂ O), nitrogen trifluoride (NF ₃), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF ₆), each expressed as a total in units of carbon dioxide equivalent;
"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 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;
"Implementation Plan"	means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated in accordance with Schedule 2;
"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: <ul style="list-style-type: none">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; andc) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including the United Kingdom) and the right to sue for passing off;

Include the following definition if the Contract was awarded via a further competitive selection process – delete if call-off without further competitive selection

"ITT Response"	means the response submitted by the Supplier to the Invitation to Tender issued by the Customer on [insert date] ("the Customer's Invitation to Tender");
"Key Personnel"	means the individuals (if any) identified in section 3 of 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 Supplier's or the Customer's possession before the Commencement Date;
"Law"	means any act of parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Management Information"	means the management information specified in Framework Schedule 7 (Management Information Requirements);
"Mandatory Exclusion Grounds"	means any of the circumstances listed in Schedule 6 of the PA23;
"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;
"Month"	means calendar month and "Monthly" shall be interpreted accordingly;
"Normal Business Hours"	means 8.00 am to 6.00 pm local UK time, each Working Day;
"PA23"	means the Procurement Act 2023;
"Party"	means the Supplier or the Customer and "Parties" shall mean both of them;
"Personal Data"	has the meaning set out under the Data Protection Legislation;

- "Personal Data Breach"** has the meaning set out under the Data Protection Legislation;
- "Premises"** means the location where the Goods and/or Services are to be provided, as set out in the Master Contract Schedule and/or any other Contract Document;
- "Processor"** has the meaning set out under the Data Protection Legislation;
- "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) to commit any offence:
 - i) under the Bribery Act 2010;
 - ii) under legislation creating offences concerning fraudulent acts or omissions;
 - iii) at common law concerning fraudulent acts relating to this Contract or any other contract with ESPO and/or Customer; or
 - iv) involving slavery or human trafficking; or
 - c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer;
- "Project Specific IPRs"** means:
- a) IPRs in the Goods and/or Services and Deliverables provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this 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 Goods and/or Services and Deliverables by the Supplier (or by a third party on behalf of the Supplier) under this Contract,
- "Property"** means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with this 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 such measures adopted by it;
"Publishable Performance Information"	means any of the information relating to performance in respect of a key performance indicator where it is expressed as publishable in this Contract;
"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 Supplier 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;
"Regulations"	means the Procurement Regulations 2024;
"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 this Contract or any other affairs of the Customer;
"Replacement Supplier"	means any third party Supplier of Replacement Goods and/or Services appointed by the Customer from time to time;
"Replacement Goods and/or Services"	means any goods and/or services which are substantially similar to any of the Goods and/or Services and which the Customer receives in substitution for any of the Goods and/or Services following the expiry or termination of this 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 this Contract or the provision of the Goods and/or Services or an apparent request for such information under FOIA or the EIR;

"Service Credits"	means the sums referred to or sums calculated in accordance with Schedule 1 being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to Schedule 1;
"Supplier"	means the person, firm or company with whom the Customer enters into this Contract as identified in the Form of Contract;
"Supplier Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
"Supplier Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Supplier or the Customer of its obligations under this Contract and including guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Supplier's Representative"	means the representative appointed by the Supplier from time to time in relation to this Contract;
"Supplier Solution"	means the Supplier'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;
"Supplier's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Suppliers of the Supplier, including IPRs belonging to them, 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 all services comprised in the Goods and/or Services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents;
"Sites"	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services;
"Specification"	means the specification in Framework Schedule 1 (Goods and/or Services);

- "Staff"** means all persons employed by the Supplier and/or any Sub-Contractor to perform its obligations under this Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, providers and Sub-Contractors used in the performance of its obligations under this Contract;
- "Sub-Contract"** means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier 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 Supplier 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 Supplier 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;
- "Tender"** Include the following definition if the Contract was awarded via a further competitive selection process – delete if call-off without further competitive selections
means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to Suppliers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;
- "Transparency Information"** means:
- (a) any information, including the contents of this Contract and any amendments to it, permitted or required by the PA23 and the regulations published under it (subject to any exemptions set out in section 94 and section 99 PA23);
 - (b) any information about this Contract, including the content of the Contract and any amendments to it, requested under FOIA or the EIR (subject to any relevant exemptions); and
 - (c) where relevant any Publishable Performance Information.
- "Valid Invoice"** means an invoice issued by the Supplier to the Customer that complies with clause 11.2.2;
- "Variation"** has the meaning given to it in clause 32;

"Variation Procedure" means the procedure set out in clause 32;

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

choose from the options below about Warranty Period and consider whether to include at all

"Warranty Period" means [the period from and including the date of Delivery of the Goods to the date [twelve (12)] Months thereafter/the period for each item as stated in the [ITT Response/Master Contract Schedule]];

"Working Day" means any day other than a Saturday or Sunday or public holiday in [England and Wales and/or Scotland and/or Northern Ireland].

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 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;
- 1.2.4 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;
- 1.2.5 the schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules;
- 1.2.6 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;
- 1.2.7 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 1.2.8 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;

- 1.2.9 a term or expression contained in this Contract which is specifically defined in this Contract and the Framework Agreement shall be interpreted in accordance with this Contract rather than the Framework Agreement, but a term or expression contained in this Contract which is capitalised but which is not specifically defined in this Contract 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 or business sector where appropriate, otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.11 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 this Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.11.1 the Framework Agreement;
 - 1.2.11.2 the Master Contract Schedule;
 - 1.2.11.3 these Call-Off Terms; and
 - 1.2.11.4 any other Contract Document or document referred to in these Call-Off Terms.

2. DUE DILIGENCE

- 2.1 The Supplier 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 this Contract.

3. CONTRACT PERIOD

- 3.1 This Contract shall take effect on the Commencement Date and shall continue for the Contract Period.
- 3.2 Subject to clause 3.3, the Customer may extend this Contract beyond the Initial Term by the Extension Period or Extension Periods, provided that, if the Customer wishes to extend this Contract, it shall give to the Supplier at least **[three (3)]** Months' written notice of such intention before the expiry of the Initial Term or the then current Extension Period, in which case the extension shall take place unless the Supplier serves, at least **[one(1)]** Month before the expiry of the Initial Term or Extension Period, a written notice upon the Supplier objecting to the extension provided that the number of Extension Periods shall be limited as provided in section 1 of the Master Contract Schedule.
- 3.3 Subject to clause 3.3, if the Customer gives such notice, the Contract Period shall be extended by the Extension Period. The Contract Period shall not in any event exceed **[four (4)]** years from the Commencement Date.
- 3.4 If the Customer does not wish to extend this Contract beyond the Initial Term or an Extension Period, this Contract shall expire on the expiry of the Initial Term or that Extension Period.

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

- 4.1.1 The Supplier 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 Contract Charges. The Customer may, upon reasonable prior written notice during Normal Business Hours, inspect and examine the manner in which the Supplier supplies the Goods and/or Services at the Premises for the purposes of ensuring compliance with this Contract, provided that such inspection shall not unreasonably interfere with the Supplier's operations.
- 4.1.2 , The Supplier accepts responsibility for all damage to, shortage or loss of the Goods which exists on delivery of them to the Customer if:
 - 4.1.2.1 the same is notified in writing to the Supplier within **[five (5)]** Working Days of receipt of the Goods by the Customer or such longer period which is reasonable in the circumstances; and
 - 4.1.2.2 the Goods have been handled and stored by the Customer in accordance with the Supplier's instructions.
- 4.1.3 Pursuant to clause 4.1.2, the Supplier shall, so far as is reasonable in accordance with the Law, replace or repair the Goods (or part thereof) which have been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit.

- 4.1.4 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and/or Services and the performance of its obligations under this Contract.

Applicable to provision of Learning Management System

The terms and conditions relating to the supply of:

- 4.1.5 hardware and associated training and consultancy services comprised in the Goods and/or Services are set out in Appendix 1;

- 4.1.6 software as a service comprised in the Goods and/or Services are set out in Appendix 2; and

- 4.1.7 software licences comprised in the Goods and/or Services are set out in Appendix 3 of Schedule 3

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 Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.

- 4.2.2 The Supplier shall not deliver any Equipment or begin any work on the Premises without obtaining Approval, such Approval not to be unreasonably withheld or delayed.

- 4.2.3 All the Equipment brought onto the Premises shall be at the Supplier'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 Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer negligently or maliciously. The Supplier 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 Supplier's sole cost. Unless otherwise stated in this Contract, the Equipment brought onto the Premises will remain the property of the Supplier.

- 4.2.4 The Supplier shall maintain all items of Equipment on the Premises in a safe, serviceable and clean condition.

- 4.2.5 The Supplier 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 hazardous, noxious or not in accordance with this Contract; and

- 4.2.5.2 replace it with a suitable substitute item of Equipment.

- 4.2.6 Upon termination or expiry of this Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier

to supply the Goods and/or Services, and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

4.3 Quality

- 4.3.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, and where applicable, shall maintain accreditation with the relevant Technical Standards and Quality Standards authorisation body. Without prejudice thereto, to the extent that the standard to which the Goods and/or Services must be provided has not been specified in this Contract, the Supplier 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 Supplier shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.
- 4.3.2 The Supplier 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 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 Supplier shall perform its obligations under this Contract in a timely manner.
- 4.3.4 The Supplier shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the Specification (as a minimum), the Master Contract Schedule and/or any other Contract Document and in accordance with all applicable Laws, including 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 Supplier shall at all times during the Contract Period ensure that:
- 4.3.5.1 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 Supplier by the Customer prior to entry into this Contract; and

4.3.5.2 the Goods and/or Services are supplied in accordance with the Supplier Solution.

4.4 Delivery

- 4.4.1 The Supplier shall make delivery of the Goods which as a minimum meet the requirements stated in the **Master Contract Schedule/ITT Response**. Delivery shall be **at no cost to the Customer and** at the sole risk of the Supplier.
- 4.4.2 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 Charge for those Goods or appropriation of the relevant Goods by the Supplier to an order from the Customer.
- 4.4.3 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.
- 4.4.4 The Supplier shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.
- 4.4.5 The issue by the Customer of a receipt note for Delivered Equipment and/or the Goods shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment or the Goods.
- 4.4.6 Except where otherwise provided in this Contract, the Goods shall be Delivered (which may include installation) 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.
- 4.4.7 Where the Goods are Delivered by the Supplier, 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.
- 4.4.8 Except where otherwise provided in this Contract, Delivery shall include the unloading, stacking or installation of the Goods and/or Services by the Staff or the Supplier's carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 4.4.9 Subject to clause 4.2.2, in the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan, 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 they are Delivered satisfactorily.
- 4.4.10 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 may give notice in writing to the Supplier to remove them within ten (10) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Supplier.

4.5 **Warranty**

choose whether to include Warranty Period

The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship. If the Customer shall within such Warranty Period or within [twenty five(25)/fifty(50)] Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier 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. [CUSTOMER'S WARRANTY/NOT USED]

Consider adding a new clause 5 with a warranty from the Customer about the accuracy of the information given by it in relation to e.g. the extent and nature of the items to be serviced. Can say Not Used otherwise

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

If a Customer has a BCDR Plan then this may need to be included and/or referring to at this point

6.1 The Supplier 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 practicable that in the event of unexpected circumstances, either within or external to the Supplier'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 Supplier shall comply with the monitoring arrangements referred to in the Master Contract Schedule and/or any other Contract Document including providing such data and information as the Supplier may be required to produce under this Contract.

7.2 Where requested by the Customer, the Supplier 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 Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract, it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 8.2 The Supplier shall promptly inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which materially affects or may materially affect the Supplier's ability to perform its obligations under this Contract.
- 8.3 In the event of industrial action by the Supplier's own employees or others that materially affects the supply of the Goods and/or Services, the Supplier shall submit proposals to the Customer for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Contract, and the Customer shall not unreasonably withhold or delay its Approval of such proposals.
- 8.4 If the Supplier's proposals referred to in clause 8.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Parties shall enter into good faith discussions to agree on alternative proposals. If no agreement can be reached within [14 days] this Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.5 If the Supplier is temporarily unable to fulfil the requirements of this 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 Supplier as a direct result of such disruption. The Supplier shall not be considered in breach of this Contract during any such period of disruption.

9. SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS

Critical Service Failure as defined in the Master Contract Schedule is a breach of contract giving the Customer the option to terminate.

NB. Contractual service levels need to be captured in Schedule 1. The difference between a failure to meet service levels which given rise to service credits is that the Supplier's failure in that case is not a fundamental failure giving rise to possible termination.

The service credits are intended to be the sole 'operational' remedy for a minor failure in performance.

- 9.1 The Supplier 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 calculated in accordance with the provisions of schedule 1 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate this Contract with immediate effect upon giving written notice to the Supplier.
- 9.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier'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 Supplier materially fails to comply with any of the material terms of this 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 Supplier a reasonable opportunity at the Supplier'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 or to supply substitute Goods and/or Services and carry out any other necessary work to ensure that the material terms of this Contract are fulfilled, following reasonable consultation with the Supplier;
 - 9.3.2 reject the Goods (in whole or in part) and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;
 - 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 provide for the payment of Delay Payments, then the Supplier shall pay such amounts calculated in accordance with the Master Contract Schedule. Unless otherwise agreed by the Parties, any accrued Delay Payments shall be set off against future payments due to the Supplier. In the event that no future payments are due, the Supplier shall make payment within [30 days] of receiving written demand;
 - 9.3.5 carry out at the Supplier's expense any work necessary to make the Goods and/or Services comply with this Contract;
 - 9.3.6 without terminating this Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer (not to be unreasonably withheld) that the Supplier will once more be able to supply all or such part of the Goods and/or Services in accordance with this Contract;
 - 9.3.7 without terminating the whole of this Contract, terminate this Contract immediately 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 Supplier for, and the Supplier shall pay within 30 days of receiving written demand, 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 Supplier 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 substitute Goods and/or Services.

9.4 In the event that the Supplier:

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 this Contract with immediate effect by giving the Supplier notice in writing to that effect.

10. [PREMISES/NOT USED]

This clause may be deleted if there is no requirement for the Supplier to be present on the Customer's site other than to make deliveries.

10.1 Inspection of Premises

10.1.1 The Supplier acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the Goods and/or Services and that the specified actions to remedy the unsuitable aspects of the Customer's Premises, together with a timetable for and the costs and charges of those actions, have been specified in the Master Contract Schedule and/or any other Contract Document.

10.1.2 If the Supplier has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions, timetable, costs and charges in accordance with clause 10.1.1, then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises of which it is not aware at the time of entry into this Contract. The onus shall be on the Supplier to prove to the Customer that any work to the Customer's Premises is required in respect of such a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.

10.1.3 Any disputes relating to due diligence as set out in clause 2 or this clause 10 shall be resolved in accordance with the Dispute Resolution Procedure.

10.2 Licence to Occupy Premises

- 10.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with this Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge, and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract.
- 10.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 10.2.3 Save in relation to such actions identified by the Supplier in accordance with clause 10.1.1 and the Master Contract Schedule and/or any other Contract Document (if any), should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval, and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it has Approved pursuant to this clause 10.2.3 without undue delay. Ownership of such modifications shall vest in the Customer.
- 10.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. Damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 10.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff, and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

10.3 Property

- 10.3.1 Where the Customer issues Property free of charge to the Supplier, such Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during Normal Business Hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property, and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the

Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 10.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 10.3.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with this Contract and for no other purpose without Approval.
- 10.3.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 10.3.5 The Supplier shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

11. PAYMENT AND CONTRACT CHARGES

11.1 Contract Charges

- 11.1.1 In consideration of the Supplier's performance of its obligations under this Contract, the Customer shall pay the Contract Charges at the times and otherwise in accordance with section 6 of the Master Contract Schedule and clause 11.2 (Payment and VAT). In particular, the Supplier shall issue its invoices to the Customer at the times set out in section 6 of the Master Contract Schedule, failing which, the Supplier shall issue its invoices to the Customer within a reasonable period of completing each delivery of the Goods and/or Services.

The following sub-clauses 11.1.2-11.1.4 are optional provisions so the Customer may choose for them all to be deleted.

- 11.1.2 The Supplier may request a variation in the Contract Charges which is to apply to the Goods and/or Services which are ordered by the Customer under this Contract after the relevant Adjustment Date in accordance with the following:

- 11.1.2.1 the request being submitted at least three months before the Adjustment Date; and

- 11.1.2.2 the written agreement of the Customer.

11.1.3 The earliest Adjustment Date for any increase in the Contract Charges in accordance with this clause shall be the first Working Day following the [first] anniversary of the Commencement Date. Thereafter, any subsequent increase to any of the Contract Charges in accordance with this clause shall not occur before the [first] anniversary of the previous Adjustment Date.

11.1.4 To make a request for a variation of some or all of the Contract Charges in accordance with this clause, the Supplier shall provide the Customer with:

11.1.4.1 a list of the Contract Charges it wishes to review; and

11.1.4.2 for each of the Contract Charges under review, written evidence of the justification for the requested increase including:

Detail to be confirmed on a case by case basis and only relevant clauses included.

- a) a breakdown of the profit and cost components that comprise the relevant Contract Charge;
- b) details of the movement in the different identified cost components of the relevant Contract Charge;
- c) reasons for the movement in the different identified cost components of the relevant Contract Charge; and
- d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components.

The following sub-clause is optional so the Customer may choose for it to be deleted. If this clause is included, a corresponding clause must be included in 2.1.4 of Framework Schedule 2

11.1.5 The Contract Charges may be increased by the Supplier by written notice given at any time after each of the [first] (and each subsequent) anniversary date of the Commencement Date by a percentage not exceeding the percentage increase in the Index published over the 12 Month period immediately preceding the then relevant anniversary date.

1.1.1 Notwithstanding any other provisions in this Contract any Contract Charges [submitted in relation to a further competitive selection process held in accordance with Framework Schedule 4 (Ordering Procedure)] shall be equal to or lower than the Framework Prices where they relate to the same Goods and/or Services, provided that if the Customer requires a change or changes to the Goods or Services which objectively justify an increase in the Contract Charges for them in excess of the Framework Prices, the increase in the Contract Charges payable by the Customer shall be no more than is reasonable to reflect such change or changes, provided that, in any event, the

Supplier undertakes to the Customer that such change or changes shall not alter the overall nature of the Contract or the Goods and/or Services.

- 11.1.6 The Customer shall, in addition to the Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the invoiced amount of the Goods and/or Services supplied in accordance with this Contract.
- 11.1.7 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 Supplier by another Contracting Authority 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 Supplier to
- 11.1.8 The Parties acknowledge that the Supplier is required to pay to ESPO the Framework Fee.

11.2 Payment and VAT

- 11.2.1 When the Supplier submits an invoice to the Customer, the Customer will consider and verify that invoice no later than [14] days after the Customer's receipt of the invoice.
- 11.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and/or the Services provided, and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice. The Customer shall accept and process for payment an invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the following standard on electronic invoicing. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of UK Law under the European Union (Withdrawal) Act 2018.
- 11.2.3 The Customer shall pay the Supplier 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. The Customer shall determine the validity of the invoice no later than 14 days after receipt of the invoice.
- 11.2.4 When the Customer fails to comply with clause 11.2.1, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.2.3.
- 11.2.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
 - 11.2.5.1 provisions having the same effect as clauses 11.2.1 – 11.2.4 of this Contract; and

11.2.5.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 11.2.1 – 11.2.4 of this Contract.

For the purposes of this sub clause 11.2.5, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or part of this Contract.

- 11.2.6 The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate this Contract under clause 19.3.3 (Termination on Default) for failure to pay undisputed sums of money.
- 11.2.7 Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at 3% per annum above the Bank of England base rate.

11.3 Recovery of Sums Due

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

12. [KEY PERSONNEL/NOT USED]

This clause only needs to be included where the Services to be provided require the particular 'know-how' of the Supplier's personnel e.g. with IT software development.

- 12.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.

- 12.2 The Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 12.3 The Customer shall not unreasonably delay or withhold its Approval to the removal of, or appointment of a replacement for any relevant, Key Personnel by the Supplier or Sub-Contractor.
- 12.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and/or Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days, and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 12.5 The Customer may require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory, provided that such request is reasonable and the Customer provides written justification for such request. The Customer shall not be liable for the cost of replacing any Key Personnel.

13. SUPPLIER'S STAFF

- 13.1 The Customer may, by written notice to the Supplier, 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 Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with this Contract, specifying the capacities in which they are concerned with this 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 and provided to them for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 13.4 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Supplier and Staff have failed to comply with clause 13.2 or 13.3 shall be final and conclusive.

The following clauses regarding safeguarding can be removed if not relevant to the specific call off contract.

Children and Vulnerable Adults

- 13.5 Where the provision of the Goods and/or Services requires any of the Supplier's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Supplier will make checks in respect of such employees and volunteers with the Disclosure & Barring Service 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.
- 13.6 The Supplier will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 in respect of such employees and volunteers that work in a Regulated Activity.
- 13.7 The Supplier will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three Years.
- 13.8 The Supplier 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 Act 2006 and will notify the Customer 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.
- 13.9 Where the provision of the Goods and/or Services does not require any of the Supplier's employees or volunteers to work in a Regulated Activity but where the Supplier's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Supplier will in respect of such employees and volunteers:
 - 13.9.1 carry out Employment Checks; and
 - 13.9.2 carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Contract Period.
- 13.10 Where the principal obligation of the Supplier is to effect delivery of goods to the Premises and does not require any element of on-site working, including installation and commissioning of Goods in a private dwelling, the Supplier shall ensure that the Staff shall not have direct contact with children and/or vulnerable adults during any delivery or attendance at the Premises. The Supplier 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.

The following clause should be deleted where TUPE is considered not to apply in any circumstances. If, however, there is a chance that TUPE will apply then the clause should remain and customers should be advised that the following clause should be removed if it does not apply to their requirement

14. [TUPE/NOT USED]

- 14.1 The Parties hereby acknowledge that, pursuant 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 to the Services immediately before the Commencement Date (“the Transferring Employees”) shall take effect as if originally made between the Supplier and the employees save for those who object pursuant to Regulation 4(7) of TUPE.

- 14.2 The Supplier shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including 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 Supplier shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to such of those of the Supplier’s Staff who are employees who are wholly or mainly assigned to or in the Services (“Returning Employees”) including the following:
 - 14.3.1 the total number of the Supplier’s Staff whose employment/engagement shall terminate at the end of the Contract Period[, save for any operation of Law];
 - 14.3.2 the age, gender, salary or other remuneration, future pay settlements and redundancy and pension entitlements of the Supplier’s Staff referred to in clause 14.3(a);
 - 14.3.3 the other terms and conditions of the employment/engagement of the Supplier’s Staff referred to in clause 14.3(a), their job titles and qualifications;
 - 14.3.4 details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims then current or threatened; and
 - 14.3.5 details of all collective agreements, with a brief summary of the current state of negotiations with such bodies and with details of any then 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 Supplier 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 Supplier shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Supplier.

- 14.6 The Customer may use the information it receives from the Supplier 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 Supplier shall provide the Replacement Supplier with such assistance as it shall reasonably request.
- 14.7 The Supplier shall indemnify and keep indemnified and hold the Customer (both for themselves and any Replacement Supplier) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or any Replacement Supplier may suffer or incur as a result of or in connection with:
- 14.7.1 the provision of information which should be made pursuant to clause 14;
 - 14.7.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Supplier or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - 14.7.3 any failure by the Supplier 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 Supplier to comply with its duties under Regulation 13 of TUPE;
 - 14.7.4 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 Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - 14.7.5 any claim by any person who is transferred by the Supplier to the Customer and/or a Replacement Supplier whose name is not included in the list of Returning Employees.
- 14.8 If the Supplier 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 Supplier undertakes to the Customer that, during the twelve Months prior to the end of the Contract Period, the Supplier shall not (and shall procure that any Sub-Contractor shall not) without the Approval of the Customer (such Approval not to be unreasonably withheld or delayed):
- 14.10.1 amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including pay of any of the Staff (other than where such amendment or variation has previously been agreed between the Supplier 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);

- 14.10.2 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);
- 14.10.3 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 Supplier, provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services; or
- 14.10.4 recruit or bring in any new or additional individuals to assist in the provision of the Services who were not already involved in providing the Services prior to the relevant period.

15. STAFFING SECURITY

- 15.1 The Supplier shall comply with the Customer's staff vetting procedures in so far as is reasonable (where provided to the Supplier) in respect of all Staff employed or engaged in the provision of the Goods and/or Services.

16. INTELLECTUAL PROPERTY RIGHTS, DATA, ETC.

- 16.1 Save as granted under this Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 16.2 In the absence of prior written agreement by the Customer to the contrary, the Project Specific IPRs shall on their creation vest in the Customer.
- 16.3 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 16.4 With respect to the Suppliers obligations under this Contract, the Supplier undertakes, warrants and represents that:
 - 16.4.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;
 - 16.4.2 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;

- 16.5 The Supplier shall during and after the Contract Period 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 and administrative expenses), 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:
- 16.5.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
 - 16.5.2 performance of the Supplier's responsibilities and obligations hereunder.
- 16.6 The Supplier shall promptly notify the Customer if any claim or demand is made or action brought against the Supplier 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 Supplier's responsibilities and obligations hereunder.
- 16.7 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 Supplier is likely to be made or brought, the Supplier shall at its own expense and within a reasonable time either:
- 16.7.1 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
 - 16.7.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and
 - 16.7.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 16.8 **Customer Data**
- 16.8.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
 - 16.8.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly Approved by the Customer.
 - 16.8.3 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier 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.

- 16.8.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 16.8.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.
- 16.8.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
 - 16.8.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 16.8.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.
- 16.8.7 If at any time the Supplier 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 Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

16.9 Protection of Personal Data

- 16.9.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, where the Customer has completed the second column of the table in section 9 of the Master Contract Schedule to specify the processing of Personal Data it requires the Supplier to perform, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be decided upon by the Supplier.
- 16.9.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 16.9.3 The Supplier 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:

- 16.9.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 16.9.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Goods and/or Services;
 - 16.9.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 16.9.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 16.9.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 16.9.4.1 process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 16.9.4.2 ensure that it has in place Protective Measures as reasonably appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 16.9.4.3 ensure that:
 - (a) the Supplier Personnel do not process Personal Data except in accordance with this Contract (and in particular section 9 of the Master Contract Schedule);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel (including any sub-processors or third party processors) who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Supplier's duties under this clause;

- (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
- (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

16.9.4.4 not transfer Personal Data outside of the UK unless the Approval of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer as determined by the Customer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- (d) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and

16.9.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of this Contract unless the Supplier is required by Law to retain the Personal Data.

16.9.5 Subject to clause 16.9.6, the Supplier shall notify the Customer immediately if it:

- 16.9.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 16.9.5.2 receives a request to rectify, block or erase any Personal Data;
- 16.9.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 16.9.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 16.9.5.5 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
 - 16.9.5.6 becomes aware of a Data Loss Event.
- 16.9.6 The Supplier's obligation to notify under clause 16.9.5 shall include the provision of further information to the Customer in phases, as details become available.
- 16.9.7 Taking into account the nature of all processing, the Supplier shall provide the Customer with reasonable assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 16.9.5 (and in so far as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 16.9.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 16.9.7.2 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;
 - 16.9.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 16.9.7.4 assistance as requested by the Customer following any Data Loss Event; and
 - 16.9.7.5 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.
- 16.9.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 employees, unless:
- 16.9.8.1 the Customer determines that the processing is not occasional;
 - 16.9.8.2 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

- 16.9.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 16.9.9 The Supplier shall, in so far as is reasonable, allow for audits of its Personal Data processing activity by the Customer or the Customer's designated auditor.
- 16.9.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 16.9.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:
 - 16.9.11.1 notify the Customer in writing of the intended Sub-processor and processing;
 - 16.9.11.2 obtain the Approval of the Customer;
 - 16.9.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16.9 such that they apply to the Sub-processor; and
 - 16.9.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 16.9.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 16.9.13 The Customer 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.
- 16.9.14 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 Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Clause 16.9.15 (and schedule referred to therein) must only be used if there is also any Personal Data that is under 'Joint Control'. If not then this clause (and connecting schedule) should be deleted.

- 16.9.15 Notwithstanding clause 16.9.1 the Parties acknowledge that they are also Joint Controllers for the purpose of the Data Protection Legislation in respect of: [Insert the scope of Personal Data where the purposes and means of the processing is determined by both Parties]. In respect of the Personal Data under Joint Control and identified herein, clause 16.9.1 – 16.9.4 will not apply and the Parties agree to comply with the requirements as detailed in section 10 of the Master Contract Schedule.

16.10 Security of Premises

- 16.10.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Supplier 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.
- 16.10.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

16.11 Confidentiality

- 16.11.1 Except to the extent set out in this clause 16.11 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 16.11.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 16.11.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 16.11.2 Clause 16.11.1 shall not apply to the extent that:
 - 16.11.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, the PA 2023, Code of Practice on Access to Government Information or the EIR;
 - 16.11.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.11.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.11.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 16.11.2.5 it is independently developed without access to the other Party's Confidential Information.
- 16.11.3 The Supplier 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.
- 16.11.4 The Supplier 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.

- 16.11.5 At the written request of the Customer, the Supplier 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.
- 16.11.6 In the event that any default, act or omission of any Staff of the Supplier causes or contributes (or could cause or contribute) to the Supplier's breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances. To the fullest extent permitted by its own obligations of confidentiality to any such Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require to demonstrate that the Supplier is taking appropriate steps to comply with this clause.
- 16.11.7 In the event that any default, act or omission of any of the Customer's Staff causes or contributes (or could cause or contribute) to the Customer's breaching its obligations as to confidentiality under or in connection with this Contract, the Customer shall take such action as may be appropriate in the circumstances. To the fullest extent permitted by its own obligations of confidentiality to any of such Staff, the Customer shall provide such evidence to the Supplier as the Supplier may reasonably require to demonstrate that the Customer is taking appropriate steps to comply with this clause.
- 16.11.8 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under clause 7.2):
- 16.11.8.1 to any consultant, contractor or other person engaged by the Customer or to the Infrastructure and Projects Authority relating to a review undertaken in relation to this Contract
 - 16.11.8.2 the Customer's Auditors for the purpose of the examination and certification of the Customer's accounts; or
 - 16.11.8.3 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.
- 16.11.9 The Customer shall use reasonable endeavours to ensure that any party who receives the Supplier's Confidential Information pursuant to clause 16.11.8 shall undertake to the Customer to keep such information confidential.
- 16.11.10 Nothing in this clause 16.11 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this 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.
- 16.11.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this

Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

16.12 Freedom of Information

- 16.12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 16.12.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 16.12.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information;
 - 16.12.2.2 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
 - 16.12.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 16.12.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this 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 EIR.
- 16.12.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 16.12.5 The Supplier acknowledges that (notwithstanding the provisions of clause 16.11) the Customer may, acting in accordance with Code of Practice on Access to Government Information ("**the Code**"), be obliged under the FOIA, or the EIR to disclose information concerning the Supplier or the Goods and/or Services:
- 16.12.5.1 in certain circumstances without consulting the Supplier; or
 - 16.12.5.2 following consultation with the Supplier and having taken their views into account,
- provided always that, where this clause 16.12.5 applies, the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 16.12.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this 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.
- 16.12.7 The Supplier 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 16.12.5.

16.13 Transparency

- 16.13.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the EIR and the PA23, the Transparency Information is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the Transparency Information is exempt from disclosure in accordance with the provisions of the FOIA, the EIR or the PA23.
- 16.13.2 Notwithstanding any other term of this Contract, the Supplier hereby gives its consent for the Customer to publish the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA, the EIR and the PA23 redacted), to the general public.
- 16.13.3 The Customer may consult with the Supplier to inform its decision regarding any redactions, but the Customer shall have the final decision in its absolute discretion.
- 16.13.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Transparency Information.
- 16.13.5 The Customer will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide an explanation to the Supplier. If the Customer reasonably determines that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Supplier acknowledges that the Customer would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.
- 16.13.6 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Transparency Information being published to ensure the public obtain a fair view on how the Contract is being performed.
- 16.13.7 The Supplier acknowledges that the Customer may be required to provide and publish information and to publish notices under PA23 during the lifetime of the Contract. The Supplier consents and agrees

to such publication and to fully cooperate with the Customer where it is required in order to publish such information or notice in accordance with the PA23 (or any supporting legislation) and also agrees to provide all reasonable assistance that may be necessary to enable the Customer to do so. The Supplier also agrees to coordinate and respond to the Customer in relation to this clause 16.13.7 in a timely manner.

- 16.13.8 Where this Contract is terminated as stated in section 80(3) of the PA23, the Supplier agrees to cooperate with and provide the Customer with all relevant information it may hold that may need to be provided in any termination notice, that the Customer is required to publish in accordance with section 80(1) of the PA23 as soon as reasonably practicable.

17. WARRANTIES AND REPRESENTATIONS

17.1 The Supplier 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) to enter into and perform its obligations under this Contract;
- 17.1.2 this Contract is executed by a duly authorised representative of the Supplier;
- 17.1.3 in entering this Contract, not committed any Prohibited Act or 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 this 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 this 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 this 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 Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier or its 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 this Contract and shall maintain the same in full force and effect for at least the Contract Period;
 - 17.1.11 at the Commencement Date it has not been convicted of any offence involving slavery and human trafficking; and it has not been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
 - 17.1.12 at the Commencement Date it has not: (1) communicated to any person other than the Customer the amount or approximate amount of the proposed price tendered in any Further competitive selection process Procedure, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required or desirable for the preparation of the tender or the performance of this Contract; (2) entered into any agreement or arrangement with any person that it shall refrain from tendering or as to the amount of any tender submitted in any Further competitive selection process Procedure; or (3) offered to pay or give or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to the proposed price tendered in any Further competitive selection process Procedure any act or thing of the sort described in this clause 17.1.12. In the context of this clause 17.1.12 .
 - 17.1.13 It shall promptly notify the Customer in writing if, during the Term:
 - 17.1.13.1 any Mandatory Exclusion Ground applies to the Supplier, the Supplier's Connected Persons or any Sub-Contractor; or
 - 17.1.13.2 any Discretionary Exclusion Ground applies to the Supplier, the Supplier Connected Persons or any Sub-Contractor; or
 - 17.1.13.3 the Supplier, the Supplier's Connected Persons or any Sub-Contractors are placed on the Debarment List.
- 17.2 The Supplier 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:

To be included where goods are being supplied under the contract.

17.2.3.1 of satisfactory quality in accordance with section 14 of the Sales of Goods Act 1979; 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 this 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 reasonably requested by the Customer and the Quality Standards.

17.3 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 Supplier.

17.4 The Supplier 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 this 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 employees;
 - 18.1.1.3 any claim under the indemnity in clauses 11.2.6 (VAT), [14 (TUPE)] or 18.3 (Taxation, National Insurance and Employment Liability); or
 - 18.1.1.4 any other matter which, by Law, may not be excluded or limited.
- 18.1.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under this Contract.
- 18.1.3 Subject always to clause 18.1.1 and clause 18.1.4, the aggregate liability of either Party under or in relation to this Contract, whether under any indemnity or in contract, tort including negligence, breach of statutory duty or howsoever arising for Defaults arising in a Contract Year in respect of:
- 18.1.3.1 each Default resulting in direct loss to the tangible property of the other Party shall in no event exceed five million pounds sterling (£5,000,000); and
 - 18.1.3.2 all other Defaults, shall in no event exceed five million pounds sterling (£5,000,000).
- 18.1.4 Subject to clause 18.1.1, in no event, whether under any indemnity or in contract, tort including negligence, breach of statutory duty or howsoever arising, shall either Party be liable to the other for any:
- Customer to include optional sub-clauses in blue as relevant**
- 18.1.4.1 loss of profits;
 - 18.1.4.2 loss of business;
 - 18.1.4.3 loss of revenue;
 - 18.1.4.4 loss of or damage to goodwill;
 - 18.1.4.5 loss of savings (whether anticipated or otherwise); and/or

- 18.1.4.6 any indirect, special or consequential loss or damage;
- 18.1.5 Subject to clause 18.1.1 and notwithstanding clause 18.1.4, the Supplier shall be liable for the following types of loss, damage, cost or expense, which shall be, for the purposes of clause 18.1.4, regarded as direct (and not indirect, special or consequential) loss or damage, and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:
- 18.1.5.1 any additional operational and/or administrative expenses incurred by the Customer, including costs relating to time spent by or on behalf of Customer in dealing with the consequences of the Supplier's Default;
 - 18.1.5.2 any wasted expenditure or wasted charges incurred by the Customer arising from the Supplier's Default;
 - 18.1.5.3 the additional cost of procuring, implementing and operating any substitute goods and/or services for the remainder of the original Contract Period following termination of this Contract as a result of the Supplier's Default; and
 - 18.1.5.4 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 caused by the Supplier's Default.
- 18.1.6 Nothing in this Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of this Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 18.1.7 The exclusions and limitations of liability for loss suffered by the Customer contained in this Contract, including in particular this clause 18.1, shall not apply in so far as, but for the existence of any such exclusions and limitations, the Supplier would have been liable for any of such loss, and such liability for such loss would have been covered by any of the insurances maintained or required to be maintained by the Supplier in accordance with this Contract as if there were no excess or deductible under such insurances.

18.2 Insurance

Customers: The levels, excesses, deductibles and types of insurance may need to be amended. Consider setting a limit on excesses or deductibles otherwise they can be very high for each claim which could mean that the insurance is very limited and many claims uninsured.

- 18.2.1 The Supplier shall effect and maintain the following insurances in relation to the Supplier's obligations under this Contract. Such insurance shall be maintained for the Contract Period and any further periods as may be set out in the following sub-clauses of this clause.
- 18.2.2 Public Liability insurance adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of indemnity of [ten] million pounds sterling (£[10],000,000) for any one occurrence;
- 18.2.3 Employers' liability insurance at least in accordance with the Law and with an "authorised insurer" as defined by section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 to cover all risks in the performance of this Contract from time to time with a minimum limit of indemnity of [ten] million pounds sterling (£[10],000,000) for any one occurrence or such higher limit as may be required by the Law from time to time; and
- 18.2.4 Professional Indemnity insurance to cover for the Contract Period and a period ending [2/6] Years after the last date of termination of this Contract all risks in the performance of this Contract from time to time with a minimum limit of indemnity of [two]million pounds sterling (£[2],000,000) for any one claim, and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Goods and/or Services effect and maintain appropriate professional indemnity insurance during the Contract Period and a period ending [2/6] Years after the last date of termination of this Contract]; and
- 18.2.5 Cyber security insurance adequate to cover all risks in relation to this Contract from time to time with a minimum limit of [two] million pounds sterling (£[2],000,000) for any one occurrence [or such higher limit as may be required by Law from time to time].
- 18.2.6 The Supplier shall give the Customer, from time to time on written request no later than 10 Working Days after such request, copies of all insurance policies referred to in this clause or a broker's written verification or written certificate of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the last premiums due under those policies together with other reasonable evidence of compliance with the obligations of this clause 30. The Supplier shall produce to the Customer, on request, an English translation of the foregoing.
- 18.2.7 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of this Contract, the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 18.2.8 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of any insurance cover in addition to that above which will be adequate to enable the Supplier to satisfy any liability in respect of this Contract.

- 18.2.9 The above insurances shall be maintained with reputable insurance companies, on terms that are no less favourable to those generally available to a prudent Supplier in respect of risks insured in the United Kingdom insurance market.
- 18.2.10 Any excess or deductible under the above insurances shall be the sole and exclusive responsibility of the Supplier.
- 18.2.11 The Supplier shall ensure that nothing is done which would entitle any such 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 Supplier shall use reasonable endeavours to notify the Customer 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 this Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier 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 and Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of this Contract.

19. TERMINATION

19.1 Termination on insolvency

- 19.1.1 The Customer may terminate this Contract with immediate effect by giving notice in writing to the Supplier where in respect of the Supplier:
 - 19.1.1.1 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or 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;
 - 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 solvent reconstruction or amalgamation);

- 19.1.1.3 a petition is presented for its winding up (which is not dismissed within ten (10) Working Days of its service or an order is made for its winding up, or an application is made for the appointment of a provisional liquidator (other than as part of, and exclusively for the purpose of, a bona fide solvent reconstruction or amalgamation);
 - 19.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 19.1.1.5 an application or 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;
 - 19.1.1.6 it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court that" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 19.1.1.7 an application is made for a moratorium under Part A1 of the Insolvency Act 1986;
 - 19.1.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within ten (10) Working Days; or
 - 19.1.1.9 any event similar to those listed in clause 19.1.1.1 to 19.1.1.8 occurs under the law of any other jurisdiction.
- 19.1.2 The Customer may terminate this Contract with immediate effect by notice in writing where the Supplier 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 Supplier's creditors;
 - 19.1.2.2 a petition is presented and not dismissed within ten (10) Working Days, or an order made for the Supplier's bankruptcy;

- 19.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of its assets;
- 19.1.2.4 the Supplier 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;
- 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 Supplier's assets, and such attachment or process is not discharged within ten (10) Working Days ;
- 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 Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

19.2 Termination on Change of Control

19.2.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("**Change of Control**"). The Customer may terminate this Contract by notice in writing with immediate effect within six Months of:

- 19.2.1.1 being notified with reasonable details 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 this 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 solvent reorganisation or restructuring shall be disregarded.

19.3 Termination on Default

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

- 19.3.1.1 a material Default and if the Supplier has not remedied the Default to the reasonable satisfaction of the Customer within [twenty (20)] Working Days or such other longer period as may be specified by the Customer, after issue of a written

notice specifying, with reasonable details, the Default and requesting it to be remedied; or

19.3.1.2 a material Default and if the Default is not, in the reasonable opinion of the Customer, capable of remedy

19.3.2 In the event that, through any Default of the Supplier, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded so as to be unusable, the Supplier 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 Supplier.

19.3.3 If the Customer fails to pay the Supplier an undisputed sum of money when due as specified in clause 11.2, the Supplier may notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sum 10 Working Days after such notice, the Supplier may terminate this 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's exercising its rights under clause 11.3 (Recovery of Sums Due).

19.4 Termination if Framework Agreement not novated

The Customer may terminate this Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement has not been novated to a successor of its relevant business when required by ESPO in accordance with the terms of clause 31 of the Framework Agreement.

19.5 **[Termination on Financial Standing/Not used]** Customer might consider this clause is beneficial. Consider including this clause if the contract is high value, long term, or where continuity of supply is essential. It is useful if there are concerns about the Supplier's financial stability and where early termination may be needed to manage risk. For low value or short term contracts with minimal financial risk, this clause may not be necessary.

The Customer may terminate this Contract by serving notice on the Supplier 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 which:

19.5.1 adversely impacts on the Supplier'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 Supplier's ability to supply the Goods and/or Services under this Contract.

19.6 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses

or fails to comply with its obligations as set out in Schedule 6 of the Framework Agreement (Value for Money).

19.7 Termination in compliance with the Procurement Act 2023

The Customer may terminate this Contract in accordance with Section 78 of the PA23, and provided that the requirements of Section 78(7) of the PA23 have been met, where:

- i) the Customer considers that this Contract was awarded or modified in material breach of the PA23 or regulations made under it;
- ii) the Supplier has, since the award of this Contract become an Excluded Supplier or Excludable Supplier (including by reference to an associated person) and provided that the conditions in Sections 78(8) (where applicable) of the PA23 have been met; or
- iii) any Subcontractor has, since the award of this Contract become an Excluded Supplier or Excludable Supplier and provided that the conditions in section 78(3) to 78(8) of the PA23 have been met.

19.8 [Termination without Cause/Not used]

This clause and 20.2 with or without 20.3 may be included if the Parties require it; the right may be in favour of either only the Customer or both parties. Consider whether it should be subject to clauses 20.2 and 20.3 and the notice period.

'Termination without cause' means that a party (subject to giving the requisite notice) can terminate without any breach having occurred but consider deleting clause 20.2 **otherwise the Customer might be liable for a significant cost.**

Subject to clause 19.2 and 19.3, [the Customer/either Party] shall have the right to terminate this Contract at any time by giving not less than [twelve (12)] Months' written notice to the [Supplier/other Party].

20. CONSEQUENCES OF TERMINATION OR EXPIRY

20.1 Where the Customer terminates this Contract under clauses 19.1 (Termination on Insolvency), 19.2 (Termination on Change of Control), 19.3 (Termination on Default), 19.5 (Financial Standing), 19.6 (Audit), 19.7 (Benchmarking) and then makes other arrangements for the supply of the Goods and/or Services, the Customer may, in addition to its other rights and remedies, recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure reasonably incurred by the Customer throughout the remainder of the original Contract Period were it not for such termination. The Customer shall take all reasonable steps to mitigate such additional expenditure.

Delete the following clauses 20.2 and 20.3 if clause 19.10 is deleted or if the parties do not require it.

20.2 [Not Used/Subject to clause 20.3, where the Customer terminates this Contract under clause 19.10 (Termination without Cause), the Customer shall reimburse the Supplier against any reasonable and proven commitments, liabilities or

expenditure which would otherwise represent an unavoidable direct loss suffered by the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. The Supplier shall submit a fully itemised and costed list of such losses, with supporting written proven evidence of such losses reasonably and actually incurred by the Supplier as a result of such termination.]

20.3 [Not Used/The Customer shall not be liable under clause 20.2 to pay any sum which, when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated prior to the expiry of the original Contract Period.]

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

- 20.4.1 immediately return to the Customer all the Customer's 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 Suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;
- 20.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier 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 Supplier;
- 20.4.3 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;
- 20.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under this Contract. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
- 20.4.5 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or provide all such assistance and co-operation as the Customer may reasonably require;
- 20.4.6 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
- 20.4.7 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 Supplier to conduct due diligence.

- 20.5 If the Supplier fails to comply with clause 20.4.1, 20.4.4, 20.4.7 and 20.4.8, the Customer may recover possession of the items referred to therein, and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-Contractors where any such items may be held.
- 20.6 Where the end of the Contract Period occurs due to the Supplier's Default or an insolvency event described in clause 19.1, the Supplier shall provide all assistance under clause 20.4.6 and 20.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 20.7 This clause to be replaced by "Not Used" if clause 10 (Premises) is not used [Not Used/At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 10.2.1 shall automatically terminate without the need to serve notice.]
- 20.8 Save as otherwise expressly provided in this Contract:
- 20.8.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration, and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 20.8.2 the provisions of clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 16 (Intellectual Property Rights), 16.7 (Customer Data);16.8 (Protection of Personal Data), 16.11 (Confidentiality), 16.12 (Freedom of Information), 18 (Liabilities), 20 (Consequences of Termination or Expiry), 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) shall survive the termination or expiry of this Contract, as well as any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding such termination or expiry.

21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 21.1 The Supplier shall not make any press announcements or publicise this Contract in any way without Approval, and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, providers, professional advisors and consultants comply with this clause. Any such press announcements or publicity 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 this Contract in accordance with any legal obligation upon the Customer, including any relating

to examination of this Contract by the Auditor, and otherwise as the Customer wishes.

- 21.3 The Supplier 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 Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation.
- 22.2 The Supplier shall take all reasonable steps to secure the observance of clause 22.1 by all Staff employed in performance of this Contract.
- 22.3 The Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation.
- 22.4 Where any investigation and/or proceedings are undertaken by a person empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of this Contract being in contravention of Equality Legislation, the Supplier shall, free of charge: provide any information requested in the timescale allotted; attend any meetings as required and permit the Supplier's Staff to attend; promptly allow access to and investigation of any documents or data deemed by the Customer to be relevant; allow the Supplier and any of the Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person conducting such investigation and/or proceedings during the course of such investigation and/or proceedings.
- 22.5 Where any investigation is conducted or proceedings are brought under Equality Legislation which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or the Staff, and where there is a finding against the Supplier its agents or Sub-Contractors, or the Staff in such investigation or proceedings, the Supplier shall indemnify the Customer with respect to all costs, charges and expenses (including legal costs and disbursements on a solicitor and client basis 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 Supplier 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 Supplier acknowledges that the Customer may carry out an impact assessment as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services, and the Supplier shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact assessment by the Customer. The Supplier shall implement any changes or adjustments that are required as a result of, or in

connection with the outcome of the impact assessment undertaken by the Customer.

23. HEALTH AND SAFETY

- 23.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under this Contract.
- 23.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of the Staff and other persons working there.
- 23.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this 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 Supplier 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 the Staff and other persons working on the Premises in the supply of the Goods and/or Services under this Contract.

24. ENVIRONMENTAL REQUIREMENTS, GHG EMISSIONS, ETC.

Remember the need to share the environmental policies (where relevant) with the Supplier.

- 24.1 The Supplier shall, when working on the Premises, perform its obligations under this Contract in accordance with the Customer's environmental policy (which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment) so far as is reasonable and only to the extent the Supplier has received such policy, and the Supplier shall promptly acknowledge receipt of such policy.
- 24.2 The Supplier shall ensure that:
 - 24.2.1 its operations comply with all applicable environmental Law, including in relation to GHG Emissions, waste disposal, and the handling of hazardous and toxic materials;
 - 24.2.2 the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with all applicable environmental Law; and
 - 24.2.3 it will only use packaging materials that comply with all applicable environmental Law.

- 24.3 The Supplier shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:
- 24.3.1 assess the environmental impact of all past, current and future operations;
 - 24.3.2 specify steps to continuously improve environmental performance, and reduce GHG Emissions, pollution and waste;
 - 24.3.3 specify measures to reduce the use of all raw materials, energy and supplies; and
 - 24.3.4 require the Supplier Personnel to be trained in environmental matters.
- 24.4 The Supplier shall, in performing its obligations under this Contract minimise the release of GHG Emissions, air pollutants and other substances damaging to health and the environment in performing this Contract, taking into account relevant factors such as the locations from which materials are sourced, transport of materials, work-related travel by the Supplier Personnel and emissions from the Supplier's offices and equipment.
- 24.5 On each anniversary of the Commencement Date, the Supplier shall complete and submit to the Customer a written report in relation to the performance of this Contract, which shall be in a form reasonably acceptable to the Customer and contain information on:
- 24.5.1 the Supplier's GHG Emissions, using the most recent government conversion factors for greenhouse gas reporting; and
 - 24.5.2 the overall sustainability impact of the Supplier's performance of this Contract, including improvements identified by the Supplier, new policies or targets adopted to reduce the environmental impact of the Supplier's operations and contributions towards the Customer's environmental policies or targets.
- 24.6 The Customer may audit the Supplier's compliance with this clause 24 in accordance with clause 26.

25. PREVENTION OF BRIBERY AND CORRUPTION

- 25.1 Each Party shall not:
- 25.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the other Party, or any other public body or person employed by or on behalf of the other Party, 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 the other Party's Staff, consultants, agents or Sub-Contractors or any person acting on the other Party'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 Each Party warrants, represents and undertakes that:

25.2.1 it has not paid commission or agreed to pay commission to the other Party or any other public body or any person employed by or on behalf of the other Party or a public body in connection with this Contract; and

25.2.2 it has not entered into this Contract with knowledge, that, in connection with it, (i) any money has been, or will be, paid to any person working for or engaged by the other Party or any other public body or any person employed by or on behalf of the other Party in connection with this Contract, or (ii) an agreement has been reached to that effect, unless details of any such thing have been disclosed in writing to the other Party before execution of this Contract;

25.3 Each Party 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 so far as is reasonable in accordance with the Law, immediately notify in writing the other Party and ESPO if it suspects or becomes aware of any breach of this clause 24;

25.3.3 so far as is reasonable in accordance with the Law: (i) respond promptly to any of the other Party's enquiries regarding any breach, potential breach or suspected breach of this clause 25; and (ii) the Supplier shall co-operate with any investigation and allow the other Party to audit Supplier's books, records and any other relevant documentation in connection with the breach;

25.3.4 if so required by the other Party, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the other Party in writing its compliance with this clause 24; and it shall provide such supporting evidence of compliance as the other Party may reasonably request; and

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

25.4 If either Party, its Staff, consultants, agents or Sub-Contractors or any person acting on its behalf, in all cases whether or not acting with its knowledge, breaches:

25.4.1 this clause 24; or

25.4.2 the Bribery Act 2010 in relation to this Contract or any other contract between the Parties;

the other Party 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 24, each Party shall be entitled to recover in full from the Party in breach of this clause 24, and the Party in breach of this clause 24 shall on demand indemnify the other Party 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, costs and expenses (including legal costs and disbursements on a solicitor and client basis and administrative expenses) sustained by the other Party in consequence of any such breach of this clause 24.

26. RECORDS AND AUDIT ACCESS

26.1 The Supplier shall keep and maintain for the Contract Period and six (6) Years after the date of termination or expiry of this Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Goods and/or Services provided under it, the amounts paid by the Customer and records to trace the supply chain of all Goods and/or Services provided to the Customer in connection with this Contract.

26.2 The Supplier 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 Supplier shall afford the Customer and the Customer's auditors ("the **Auditors**") access to the records and accounts referred to in clause 26.2 at the Supplier's premises and/or provide copies of such records and accounts and/or permit Auditors to meet the Staff, as may be required by the Customer and/or the Auditors from time to time, and otherwise provide reasonable co-operation 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 Charges (and proposed or actual variations to them in accordance with this Contract);

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

26.3.3 to review the Supplier's compliance with the Data Protection Legislation in accordance with this Contract and any other Laws;

26.3.4 to review the Supplier's compliance with its obligations set out in schedule 6 of the Framework Agreement (Value for Money);

- 26.3.5 to review the Supplier's compliance with its security obligations set out in clause 15 (Staffing Security);
 - 26.3.6 to review any books of account kept by the Supplier 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 Supplier is complying with its obligations under this Contract, including to its obligations thereunder relating to the Modern Slavery Act 2015.
- 26.4 The Supplier shall on request afford the Customer, the Customer's Representatives and/or the Auditors access to such records and accounts as may be required by the Auditor or Customer from time to time.
- 26.5 The Supplier shall provide such records and accounts (together with copies of the Supplier'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 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 Supplier or delay the provision of the Goods and/or Services, save in so far as the Supplier accepts that control over the conduct of audits carried out by the Auditors is outside of the control of the Customer.
- 26.7 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 Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

27. PREVENTION OF FRAUD

- 27.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 27.2 The Supplier shall, so far as is reasonable in accordance with the Law, notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur, save, in any event, where complying with this provision would cause the Supplier or its Staff to be in contempt of court or commit an offence under the Proceeds of Crime Act 2002, the Terrorism Act 2000 or other Law.

27.3 If the Supplier or its Staff commits any Fraud, the Customer may:

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

27.3.2 recover in full from the Supplier, and the Supplier 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 original Contract Period were it not for such termination.

28. TRANSFER AND SUB-CONTRACTING

28.1 The Supplier shall not assign, novate, Sub-Contract or in any other way dispose of this Contract or any part of it unless Approval in its absolute discretion is given by the Customer for such transfer and provided that such transfer is in compliance with the Law. The Supplier shall pay the Customer its reasonable costs and expenses incurred in considering and dealing with any application by the Supplier for such Approval. As a condition to granting such Approval, the Customer shall be entitled to require the Supplier and the successor to the Supplier to enter into a novation agreement or deed with the Customer in a form reasonably required by the Customer and which complies with the Law.

28.2 The Supplier shall not substitute or remove a Sub-Contractor without Approval except to the extent such action is reasonable to take without delay by reason of an emergency. Notwithstanding any permitted Sub-Contract in accordance with this clause 28, the Supplier 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. If the Customer gives Approval to the Supplier to Sub-Contract any part of this Contract, the Supplier shall ensure that any such Sub-Contract complies with all relevant terms and conditions of this Contract (including the payment terms implied by Section 73 of the PA23).

28.3 The Supplier shall ensure that any proposed transferee provides all such information reasonably necessary (including redacted documents where necessary) to demonstrate compliance section 74 of the PA23.

28.4 The Supplier shall enter into a legally binding arrangement with any Sub-Contractor if directed to do so by the Customer pursuant to section 72 of the PA23.

28.5 The Supplier shall, at no charge to the Customer, provide a copy of any Sub-Contract on receipt of a request from the Customer (and shall procure authority for the Customer to publish such sub-contract as necessary to comply with its obligations under Law (including, but not limited to, as set out in the PA23 or any subordinate legislation made under the PA23)

28.6 The Customer may not Approve a proposed Sub-contract if the proposed Sub-Contractor is on the Debarment List.

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 this Contract 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 this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of [2] Months, the Affected Party may terminate this Contract with immediate effect by notice in writing to the other Party.
- 29.2 Any failure or delay by the Supplier in performing its obligations under this Contract which results from any failure or delay by an agent, Sub-Contractor or a supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 29.3 If either Party becomes aware of a Force Majeure event 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 Party 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. The notification shall include details of the Force Majeure together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 29.4 If an event a Force Majeure event gives rise to any such failure or delay on its part as described in clause 29.1, the Customer may direct the Supplier to procure the affected Goods and/or Services from a third party Supplier in which case the Supplier will be liable for payment for the provision of those Goods and/or Services for as long as the failure or delay in performance continues.
- 29.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Goods and/or Services because of an event of Force Majeure. However, if the Customer directs the Supplier to use a replacement Supplier pursuant to sub-clause 29.4, then the Customer will pay the Supplier (a) the Contract Charge; and (b) the difference between the Contract Charge and the new Supplier's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Supplier's costs are greater than the Contract Charge, provided that the Parties have agreed in advance of such a direction by the Customer.

30. WAIVER

- 30.1 The failure of either Party to insist upon strict performance of any provision of this 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 this 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 this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

31. CUMULATIVE REMEDIES

Except as otherwise expressly provided by this Contract, the rights and remedies provided by this Contract are cumulative and are not exclusive of any right or remedies provided at law or in equity or otherwise under this Contract.

32. FURTHER ASSURANCES

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

33. VARIATION

No variation of this Contract 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 this 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 this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

34.2 If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract, is held to any extent to be invalid, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

35. MISTAKES IN INFORMATION

35.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier 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. SUPPLIER'S STATUS

36.1 At all times during the Contract Period, the Supplier shall be an independent contractor and nothing in this 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 this Contract or otherwise agreed in writing by the Parties.

37. CONFLICTS OF INTEREST

- 37.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the 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 professional, pecuniary or personal interests of the Supplier or the Staff and the duties owed to the Customer under the provisions of this Contract.
- 37.2 The Supplier 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: (i) terminate this Contract immediately by giving notice in writing to the Supplier; and/or (ii) take such other steps it reasonably deems necessary; where, in the reasonable opinion of the Customer, there is an actual conflict, or a potential conflict, between the professional, pecuniary or personal interests of the Supplier or the Staff and the duties owed to the Customer under the provisions of this Contract. The action 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 AND COUNTERPARTS

- 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 this 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 this Contract.
- 38.3 The Supplier acknowledges that it has:
- 38.3.1 entered into this 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 this Contract.
- 38.4 Nothing in clauses 38.1 and 38.2 shall operate to exclude fraud or fraudulent misrepresentation.
- 38.5 This 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 this Contract, except ESPO, 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.

Only include the following sub-clause if the TUPE clause (14) has been included.

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

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 this Contract, any notice given under or in relation to this Contract shall be in writing [by letter], sent by hand, pre-paid first class post, Special Delivery post, registered post or by the recorded delivery service, and to the address for the attention of the relevant Party set out in clause 40.4 or to such other address as that Party may have stipulated in accordance with clause 40.5.

40.2 A notice shall be deemed to have been received:

40.2.1 if delivered by hand, at the time the notice is left at the address on a Working Day and, if not before 5 pm on a Working Day, on the next Working Day;

40.2.2 in the case of pre-paid first-class post, Special Delivery post, registered post or by the recorded delivery service very three Working Days from the date of posting;

40.2.3 in the case of electronic communication, three Working Days after posting of a confirmation letter (sent as above) containing the electronic communication.

40.3 In proving service, it shall be sufficient to prove that delivery by hand was made, or that the envelope containing the notice was addressed to, the relevant Party set out in clause 40.4 (or other address as properly notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, Special Delivery post, registered post or by the recorded delivery service.

40.4 For the purposes of clause 40.1, the address of each Party shall be:

40.4.1 for the Customer:

Guidance contained in this document is intended for use by ESPO employees; however, it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

Address: [address]

For the attention of: Mention a position rather than their name, in case of staff turnover. Use generic email address for the same reason.

[position]

Email: [email address]

40.4.2 for the Supplier:

Address: [address]

For the attention of: [contact name and position]

Email: [email address]

40.5 Either Party may change its address for service by serving a notice in accordance with this clause.

40.6 Any notice given under this Contract shall not be validly served if sent by email and not confirmed by a letter.

40.7 This clause 40 does not apply to the service of any proceedings or other documents in any legal action or any arbitration.

41. LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

41.1 The Supplier 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.

42. DISPUTES AND LAW

42.1 Governing Law and Jurisdiction

The parties may choose the law and jurisdiction according to where one or both of them are based.

This Contract shall be governed by and interpreted in accordance with the Laws of [England and Wales/Northern Ireland/Scotland] and the Parties agree to submit to the exclusive jurisdiction of the [English and Welsh/Northern Irish/Scottish] courts any dispute that arises in connection with this 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 this 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 Supplier's Representative.

- 42.2.2 Nothing in this dispute resolution procedure shall prevent either of the Parties from commencing or continuing court proceedings.
- 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 either the Customer or the Supplier does not agree to mediation
- 42.2.4 The obligations of the Parties under this Contract shall not cease or be suspended or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of this Contract at all times.
- 42.2.5 The procedure for mediation is as follows:
 - 42.2.5.1 a neutral 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 may 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; the Parties may at any stage seek assistance from 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; and
 - 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 may be used in evidence in any court proceedings relating to this Contract without the prior written consent of both Parties.
- 42.2.6 Each Party shall bear its own costs in relation to the reference to the Mediator. The Mediator's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Mediator) shall be borne by the Parties equally.

SCHEDULE 1

SERVICE LEVELS AND SERVICE CREDITS SCOPE

This schedule 1 sets out the Service Levels which the Supplier is required to achieve when delivering the Goods and/or Services, the mechanism by which the Supplier's failure to deliver the level of Service for which it has contracted to deliver ("**Service Failure**") will be managed and the method by which the Supplier's performance of the supply of Goods and/or Services by the Supplier will be monitored. This schedule comprises:

Part A: Service Levels;

Appendix to Part A - Service Levels and Service Credits; and

Part B: Performance Monitoring.

PART A: SERVICE LEVELS

1. PRINCIPAL POINTS

- 1.1 The objectives of the Service Levels and Service Credits are to:
 - 1.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - 1.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of Service for which it has contracted to deliver; and
 - 1.1.3 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

2. SERVICE LEVELS

- 2.1 The Appendix to this Part A of this schedule sets out Service Levels, the performance of which the Parties have agreed to measure.
- 2.2 The Supplier shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of Part B of this schedule 1.
- 2.3 If the level of performance of the Supplier of any element of the Services during Contract Period:
 - 2.3.1 fails to achieve a Service Level in respect of that element of the Service, then the Customer shall make a deduction from the Contract Charges in accordance with Appendix A to this schedule 1; or
 - 2.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 9.1 (Service Levels and remedies in the event of inadequate performance of the Services or provision of the Goods) [19.3 (Termination on Default)]

Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

APPENDIX TO PART A

If the contract has an estimated value of more than £5 million, the Customer must, to the extent required by section 52 of the PA23, set at least three key performance indicators in respect of the contract, and there must be provision about assessing performance against, and publishing information about, key performance indicators in accordance with section 71 of the PA23.

SERVICE LEVELS AND SERVICE CREDITS

Service Level		Level achieved			
		60-70%	71-90%	91-95%	96-100%
1.					
2.					
3.					
4.					

Insert the appropriate Service Levels above.

Insert Customer’s SLA if/where appropriate.

The Service Credits shall be calculated on the basis of the following formula and worked example:

Formula: 100% minus % of Service Level achieved = x% of the Contract Charges to be deducted from the next invoice payable by the Customer, or otherwise by prompt refund by the Supplier.

Worked example: 100% (e.g. Service Level requirement for data accuracy) minus 75% (e.g. accuracy of data) = 25% of the Contract Charges to be deducted from the next invoice payable by the Customer, or otherwise by prompt refund by the Supplier.

PART B PERFORMANCE MONITORING

Supplier contractual obligations in relation to MI for ESPO's purposes are contained at Schedule 7 of the Framework Agreement; however, include at this point any reasonable Customer MI that may have been agreed.

1. PRINCIPAL POINTS

- 1.1 This Part B provides the methodology for monitoring the Services:
 - 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or delivery of the Services ("**Performance Monitoring System**").
- 1.2 Within 20 Working Days of the Commencement Date, the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties, and the Parties will endeavour to agree such process as soon as reasonably possible.

2. REPORTING OF SERVICE FAILURES

- 2.1 The Supplier shall report all Service Failures and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended ("**Performance Monitoring Reports**"):
 - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
 - 3.1.2 a summary of all Service Failures that occurred during that period;
 - 3.1.3 any Critical Service Failures and details in relation thereto;
 - 3.1.4 for any repeat Service Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the Service Failures and Service Levels to which the Service Credits relate; and
 - 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Service Level reports ("Performance Review Meetings") on a Monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier

and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 3.2.1 take place within one (1) week of the reports being issued by the Supplier;
 - 3.2.2 take place at such location and time (within Normal Business Hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
 - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's Representative and any other recipients agreed at the relevant meeting. The minutes of the immediately preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any Service Failure.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with the Contract.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the Continuous Improvement Plan pursuant to paragraph 3 of schedule 6 of the Framework Agreement.

SCHEDULE 2

IMPLEMENTATION PLAN AND MILESTONES

1. IMPLEMENTATION PLAN

- 1.1 The Supplier shall supply the Goods and/or Services in accordance with the Implementation Plan that it submitted to the Customer prior to the Commencement Date which shall be incorporated into the Master Contract Schedule and/or any other Contract Document.
- 1.2 If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the plan specified in the Master Contract Schedule or any other Contract Document) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.
- 1.3 The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

2. MILESTONES

- 2.1 The Supplier shall perform its obligations so as to meet each Milestone by the Milestone Date.
- 2.2 Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 2.3 If a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Customer Delay Payments in accordance with the table in the Master Contract Schedule and/or any other Contract Document for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant criteria of the Milestone are actually achieved, and the Customer provides the Supplier with confirmation in writing of its satisfaction that the Milestone has been met.
- 2.4 No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.
- 2.5 The Customer's rights to claim Delay Payments pursuant to this Contract shall be without prejudice to any right of the Customer to claim damages or other remedy for breach.

APPENDIX 1 TO SCHEDULE 3

SUPPLY OF HARDWARE AND ASSOCIATED TRAINING AND CONSULTANCY SERVICES COMPRISED IN THE GOODS AND/OR SERVICES

1. Supply of the Goods and/or Services

- 1.1 The Supplier shall supply the Goods and/or Services in accordance with the Implementation Plan.
- 1.2 The Supplier 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 Supplier supplies the Goods and/or Services at the Premises during Normal Business Hours on reasonable notice.
- 1.3 If the Customer informs the Supplier 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 Supplier 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.
- 1.4 The Supplier accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:
 - 1.4.1 the same is notified in writing to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Customer; and
 - 1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 1.5 Where the Supplier accepts responsibility under paragraph 1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have 1.6 been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit. 1.7 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and/or Services and the performance of its obligations under the Contract
- 1.6 been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit
- 1.7 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and/or Services and the performance of its obligations under the Contract

2. Provision and Removal of Equipment

- 2.1 Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 2.3 All Equipment brought onto the Premises shall be at the Supplier'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 Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier 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 Supplier's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 2.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 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
 - 2.5.2 replace such item with a suitable substitute item of Equipment.
- 2.6 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

3. Quality

- 3.1 The Supplier 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 Supplier 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 Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 3.2 The Supplier shall ensure that the Staff shall at all times during the Contract Period:
 - 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;
 - 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
 - 3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 3.3 The Supplier shall without prejudice to paragraph 1.4 above perform its obligations under the Contract in a timely manner.
- 3.4 The Supplier 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.
- 3.5 The Supplier shall at all times during the Contract Period ensure that:
 - 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;
 - 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;
 - 3.5.3 the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
 - 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 Supplier by the Customer; and
 - 3.5.5 the Goods and/or Services are supplied in accordance with the Supplier's Solution.

4. Delivery (Goods only)

- 4.1 The Supplier shall deliver the Goods specified in the Master Contract Schedule and/or any other Contract Document in accordance with the requirements stated therein and as a minimum meet the requirements stated in the Response to the ITT, subject to clause 4.4..
- 4.2 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer in accordance with clause 4.4.2.
- 4.3 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer in accordance with clause 4.4.3.

5. Delivery

- 5.1 Delivery of Goods and provision of Services shall be governed by clause 4.4.

6. Ownership and Risk

- 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.
- 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.

7. Guarantee

- 7.1 The Supplier 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 Supplier of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Supplier 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.

APPENDIX 2 TO SCHEDULE 3

SUPPLY OF SOFTWARE AS A SERVICE COMPRISED IN THE GOODS AND/OR SERVICES

1. User Subscriptions

- 1.1 Subject to the Customer purchasing the User Subscriptions in accordance with paragraph 2 and clause 11.1, the restrictions set out in this paragraph 1. and the other terms and conditions of the Contract, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub licences, to permit the Authorised Users to use the Services and the Documentation during the Term solely for the Customer's internal business operations.
- 1.2 In relation to the Authorised Users, the Customer will use its reasonable commercial endeavours to ensure that:
 - 1.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 1.2.2 any User Subscription is not used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services or Documentation;
 - 1.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential;
 - 1.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier as may be reasonably requested by the Supplier from time to time; and
 - 1.2.5 it shall permit the Supplier or the Supplier 's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Supplier 's data processing facilities to audit compliance with the Contract. Each such audit may be conducted no more than once a year, at the Supplier 's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to interfere with the Customer's normal conduct of business.
- 1.3 The Customer shall use its reasonable commercial endeavours to not access, store, distribute or transmit any virus, or any material during the course of its use of the Services that:

1.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

1.3.2 facilitates illegal activity;

1.3.3 depicts sexually explicit images;

1.3.4 promotes unlawful violence;

1.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

1.3.6 is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this paragraph.

1.4 The Customer shall not:

1.4.1 except as may be allowed by any applicable Law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under the Contract

1.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means except to the extent expressly set out in the Contract or as may be allowed by any applicable Law which is incapable of exclusion by agreement between the Parties; or

1.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable Law which is incapable of exclusion by agreement between the Parties; or

1.4.2 access all or any part of the Services or Documentation in order to build a product or service which competes with the Services or the Documentation; or

1.4.3 subject to clause 41.2, license, sell, rent, lease, transfer, assign or distribute, the Services or Documentation to any third party except the Authorised Users, or

1.4.4 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this paragraph 1.

1.5 The Customer shall use reasonable commercial endeavours to prevent any unauthorised access to, or use of, the Services and the Documentation and, in the event of it becoming aware of any such unauthorised access or use, promptly notify the Supplier.

2. Additional User Subscriptions

- 2.1 Subject to paragraph 2.2 and paragraph 2.3, the Customer may, from time to time during the Term, purchase additional User Subscriptions and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of the Contract.
- 2.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within one Working Day of its receipt of the Customer's request.
- 2.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall pay to the Supplier the relevant fees for such additional User Subscriptions as set out in clause 11.1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Term or any Extension Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Term or then current Extension Period (as applicable).

3. Services

- 3.1 The Supplier shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of the Contract.
- 3.2 The Supplier shall use all reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - 3.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - 3.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used all reasonable endeavours to give the Customer at least ten Normal Business Hours' notice in advance.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with support in relation to the Services during Normal Business Hours as described in the Support Services Policy in effect at the time that the Services are provided.

4. Supplier's obligations

- 4.1 The Supplier undertakes that it will perform all the Services in accordance with the Documentation and with all reasonable skill and care, in a timely and efficient

manner, using appropriately qualified and experienced staff and in accordance with Best Industry Practice.

- 4.2 Without affecting its other obligations under the Contract, the Supplier shall comply with all applicable Law, including the Cybersecurity Requirements, with respect to its activities under the Contract.
- 4.3 The undertaking at paragraph 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services by the Customer or its agents contrary to the Supplier's reasonable instructions, or modification or alteration of the Services by the Customer or its agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use its best endeavours to correct any such nonconformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Notwithstanding the foregoing, the Supplier's responsibility for avoiding any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet shall be limited to the Supplier using its reasonable commercial endeavours to ensure the avoidance of such loss or damage, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.4 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 4.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract

5. Customer's obligations

- 5.1 The Customer shall use its reasonable commercial endeavours to ensure that it shall:
- 5.1.1 provide the Supplier with all necessary co-operation in relation to the Contract in order to provide the Services;
 - 5.1.2 without affecting its other obligations under the Contract, comply with all applicable Laws and regulations with respect to its activities under the Contract;
 - 5.1.3 carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner;
 - 5.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;
 - 5.1.5 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

5.1.6 except as otherwise expressly provided in the Contract, procure maintained and secure network connections and telecommunications links from its systems to the Supplier 's data centres.

APPENDIX 3 TO SCHEDULE 3

SUPPLY OF SOFTWARE LICENCES COMPRISED IN THE GOODS AND/OR SERVICES

1. Interpretation

1.1 The further definitions in this paragraph apply in this licence.

Affiliate: in relation to the Customer each and any business entity from time to time controlling, controlled by, or under common control with, the Customer.

Authorised Agent: each and any agent, employee, contractor or subcontractor of the Customer, or any Affiliate who is engaged or employed by the Customer or any Affiliate to provide Relevant Services.

Maintenance Release: a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Modification: any Maintenance Release or New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Relevant Services: any services (including the services of consultant programmers, system maintainers, outsourcing, or disaster recovery or other service suppliers) which are provided to the Customer or any Affiliate for the purpose of, or in connection with, the permitted use, development, modification or maintenance of the Software.

Software: the computer programs listed in Error! Reference source not found. and all user documentation in respect of such programs and any Modification which is acquired by the Customer during the subsistence of this licence.

2. Delivery, acceptance and installation

CUSTOMER DRAFTING NOTE: Complete paragraph 2.1, below, to describe your particular requirements.

2.1 The Supplier shall deliver [and install on the Customer's equipment] one copy of the Software [electronically OR on disk OR on CD-ROM] to the Customer at the address for the Customer (stated in the Master Contract Schedule) within 14 days of the Commencement Date or, if later, the date set out in the Master Contract Schedule.

2.2 For a period of 30 days commencing on installation of the Software, the Customer may discontinue this licence of the Software if it does not perform to the Customer's satisfaction. If the Customer does so, the Supplier shall immediately refund all monies paid by the Customer under this licence and, on receipt of that

refund, this licence shall terminate. The right under this paragraph to discontinue this licence shall not limit the Customer's right to terminate this Contract under clause 19.3 (Termination on Default).

2.3 The Customer may reject any Modification delivered by the Supplier, by written notice, within three months of delivery, if tests carried out by the Customer establish on reasonable grounds that its use would result in any diminution of the performance or functionality of the Software.

2.4 Upon such rejection:

2.5.1 the Supplier shall either correct the Modification and re-issue it or withdraw it;
or

2.5.2 in the case of a New Version, the Customer may reject the New Version and recover any sums which it may have paid to the Supplier in respect thereof.

2.5 Risk in the media on which the Software or Modification is delivered shall not pass to the Customer until, respectively, the period specified in paragraph 2.2 or paragraph 2.3 has expired (unless, respectively, the Customer has discontinued this licence beforehand or the Customer has rejected the Modification beforehand and, in either of these circumstances, risk shall not pass).

3. Licence and duration

3.1 The licence fee shall be the sum forming part of the Contract Charges set out in the Master Contract Schedule, 6 (Charges and Payment).

3.2 In consideration of the Customer's obligation to pay the licence fee forming part of the Contract Charges under clause 11 of this Contract (Payment and Contract Charges) which the Supplier hereby acknowledges, the Supplier grants to the Customer (subject to clause 19 (Termination)) a non-exclusive, licence for the Term:

3.2.1 to use the Software; and

3.2.2 subject to paragraph 3.3.2, to grant to any Authorised Agent a sub-licence to use the Software

3.3 In relation to scope of use:

3.3.1 for the purposes of paragraphs 3.2.1 and 3.2.2 above, "use" of the Software shall be restricted to use of the Software in object code form for the normal business purposes of the Customer but shall include any act which is reasonably incidental to such use, including the creation of as many copies of the Software as may be necessary to enable use of the Software in accordance with this paragraph 3.3.1 and the maintenance of a reasonable number of back-up or test copies of the Software.

3.3.2 any sub-licence granted to an Authorised Agent under paragraph 3.2.2 shall limit the Authorised Agent's right to use the Software to such right as is necessary for the purpose of carrying out the Relevant Services only.

3.3.3 the Customer shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:

- (a) as provided in this paragraph 3;
- (b) as permitted by Law; or
- (c) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer.

3.4 In relation to assignment and sub-licensing:

3.4.1 the Customer shall not grant sub-licences except as expressly permitted under paragraph 3.2.2.

3.4.2 the Customer shall be permitted to assign or novate the benefit and burden of this licence as a whole to any entity which succeeds to all or substantially all of the Customer's assets and business, subject to that successor entity first undertaking in writing to the Supplier that it will henceforth perform all the obligations of the Customer under this licence. All references in this licence to the Customer shall be construed as including any such successor entity. The Supplier shall continue to comply with the provisions of this licence after any such assignment or novation.

3.4.3 Subject to paragraph 3.4.2, the Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this Contract,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

3.5 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

3.6 Notwithstanding clause 16.10 (Confidentiality), a Party assigning any or all of its rights under this Contract may disclose to a proposed assignee any information in its possession that relates to this Contract or its subject matter, the negotiations relating to it and the other Party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this paragraph 3.6 shall be made until notice of the identity of the proposed assignee has been given to the other Party.

4. New Versions and Maintenance Releases

4.1 The Supplier shall promptly inform the Customer of any New Versions and shall offer to sell such New Versions to the Customer on the terms on which they are generally made available to the Supplier 's customers by the Supplier.

4.2 The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software.

5. Export and compliance with law

5.1 Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under this Contract (or any products, including software, incorporating any such data) in breach of any applicable Law (Export Control Laws) to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

5.2 Each Party undertakes:

5.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

5.2.2 if requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

5.3 In performing its obligations under this Contract, the Supplier shall comply with all applicable Law and the Supplier will inform the Customer as soon as it becomes aware of any changes in that Law.

6. Supplier 's warranties

6.1 The Supplier acknowledges that the Customer has entered into this licence in reliance upon the Supplier 's expertise in selecting and supplying software fit to meet the Customer's business requirements.

6.2 The Supplier warrants that:

6.2.1 it has the right to enter into this licence and to grant to the Customer a licence or sub-licence to use the Software as contemplated by this licence;

6.2.2 the Software will conform in all material respects to the Specification and be free from defects for a period of 12 months from delivery of the Software (Warranty Period);

6.2.3 the Software and the media on which the Software is delivered are free from viruses and other malicious code;

6.2.4 the media on which the Software is delivered under this licence will be free from defects;

6.2.5 it has not included or used any Open-Source Software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar in, or in the development of, the Software, nor does the

Software operate in such a way that it is compiled with or linked to any of the foregoing.

6.3 If, within the Warranty Period or as soon as reasonably practicable thereafter, the Customer notifies the Supplier of any defect or fault in the Software in consequence of which it fails to conform to any of the warranties in paragraph 6.2, the Supplier shall, at the Supplier's option, promptly repair or replace the Software.

6.4 After receipt of any such notice the Supplier shall respond and resolve the relevant defect or fault within the timescales specified in, and devoting such resources as are required under, the Specification or Master Contract Schedule in accordance with the relevant priority classification, as if such defect or fault were within the scope of the obligations concerning services in the Specification or Master Contract Schedule.

6.5 The warranties in paragraph 6.2 shall apply to any Modification that is acquired by the Customer during the course of this licence as though the references to the date of this licence were references to the date on which such Modification was acquired.

7. Intellectual Property Rights

7.1 All Intellectual Property Rights in the Software and any Modification belong, and shall belong, to the Supplier.

7.2 Without prejudice to clause 16 (Intellectual Property Rights), if any claim or action is made that the possession, use, development, modification or maintenance of the Software (or any part thereof) infringes the Intellectual Property Rights of a third party, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may, at its sole option and expense:

7.2.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this licence;

7.2.2 modify the Software so that it ceases to be infringing; or

7.2.3 replace the Software with non-infringing software, provided that if the Supplier modifies or replaces the Software,

the modified or replacement Software must comply with the warranties contained in paragraph 6.2 and the Customer shall have the same rights in respect thereof as it would have had under those paragraphs had the references to the date of this licence been references to the date on which such modification or replacement was made.