

DATED

2021

**LEICESTERSHIRE COUNTY COUNCIL,
TRADING AS ESPO**

and

[INSERT NAME OF SERVICE PROVIDER]

**FRAMEWORK AGREEMENT FOR
CONSULTANCY SERVICES**

Agreement Ref: 664-21

THIS FRAMEWORK AGREEMENT is made on [dd month] 201[]

BETWEEN:

- (1) Leicestershire County Council, trading as ESPO of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES ("**ESPO**"); and
- (2) [COMPANY'S NAME] which is a company registered in [CONFIRM WHETHER England and Wales or Scotland or Northern Ireland] under company number [company number] and whose registered office is at [registered office address] ("**Service Provider**").

BACKGROUND

- A) ESPO placed a contract notice [OJEU reference number] on [date of issue of OJEU] in the Official Journal of the European Union seeking expressions of interest from providers of consultancy services to Customers under a framework arrangement.
- B) On 17 September 2020 ESPO issued an invitation to tender ("**Invitation to Tender**") for the provision of Goods and/or Services.
- C) The Service Provider represented to ESPO that it is capable of delivering the Goods and/or Services in accordance with ESPO's requirements as set out in the Invitation to Tender and, in particular, the Service Provider made representations to ESPO in the Tender in relation to its competence, professionalism and ability to provide the Goods and/or Services in an efficient and cost-effective manner.
- D) On the basis of the Tender, ESPO selected the Service Provider to enter into a framework agreement along with a number of other Service Providers appointed to the framework to provide the Goods and/or Services to Customers on a call off or further competition basis in accordance with this Framework Agreement.
- E) This Framework Agreement sets out the award and ordering procedure for Goods and/or Services which may be required by Customers, the main terms and conditions for any Contract which Customers may conclude and the obligations of the Service Provider during and after the Term of this Framework Agreement.
- F) It is the Parties' intention that there will be no obligation for any Customer to award any Contracts under this Framework Agreement during the Term.
- G) Leicestershire County Council has entered into this Framework Agreement in its capacity as servicing authority to a joint committee known as ESPO.
- H) ESPO is established as a joint committee under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000. Through its servicing authority, ESPO procures services and goods which it supplies to public bodies, as defined in and using powers under the Local Authorities (Goods and Services) Act 1970 ("LAGSA").
- I) The members of ESPO intend to expand the ability of ESPO to do business, through Leicestershire County Council, with bodies in addition to those identified as public

bodies in LAGSA that are contracting authorities, as defined in The Public Contracts Regulations 2015, using powers under the Localism Act 2011 and the Local Government Act 2000.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Framework Agreement the following expressions shall have the following meanings:

"Adjustment Date"	means the date agreed as being the effective date for the price variation;
"Affected Party"	means the Party seeking to claim relief in respect of a Force Majeure Event;
"Affected Rebate"	means any Retrospective Rebate payable to a Trading Company in accordance with clause 16;
"Approval"	means the prior written consent of ESPO and "Approve" and "Approved" shall be construed accordingly. For the purposes of clause 23.1 written Approval is to be granted by an ESPO manager dealing with the framework;
"Anti-slavery Policy"	means ESPO's anti-slavery policy, as amended, notified to the Service Provider from time to time, comprising its Modern Slavery Statement published at https://www.espo.org/Modern-Slavery-Statement its Service Provider Code of Conduct published at https://www.espo.org/getattachment/Service-Provider-Code-of-Conduct/ESPO-Service-Provider-Code-of-Conduct-October-2018.pdf.aspx?lang=en-GB and its Whistleblowing Policy published at https://www.leicestershire.gov.uk/jobs-and-volunteering/working-for-the-council/whistleblowing-policy ;
"Audit"	means an audit carried out pursuant to clause 17 (Records and Audit Access);
"Auditors"	shall have the meaning set out in clause 17.3;
"BACS"	means the Banks Automated Clearing System;

“Call- Off Terms”	means the terms on which the Service Provider shall provide the ordered Goods and/or Services to the Customers as set out at Schedule 3 of this Framework Agreement but subject to any variations agreed by the Customer and the Service Provider and listed in the Master Contract Schedule;
“CEDR”	means the Centre for Effective Dispute Resolution;
“Change in Law”	means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-Off Terms which comes into force after the Commencement Date;
“Change of Control”	shall have the meaning set out in clause 26.10;
“Charges”	means the charges payable by Customers in accordance with the terms of their Contracts;
“Commencement Date”	means [date];
“Commercially Sensitive Information”	means the Confidential Information listed in the Master Contract Schedule and/or any other Contract Document and Schedule 9 (Commercially Sensitive Information) of the Framework Agreement comprised of commercially sensitive information: a) relating to the Service Provider, its IPR or its business or information which the Service Provider has indicated to ESPO that, if disclosed by ESPO, would cause the Service Provider significant commercial disadvantage or material financial loss; or b) that constitutes a trade secret.
“Comparable Supply”	the supply of goods and/or services to another customer of the Service Provider that are the same or similar to the Goods and/or Services;
“Complaint”	means any formal complaint raised by a Customer in relation to the performance of this Framework Agreement or any Contract in accordance with clause 34 (Complaints Handling and Resolution);
“Confidential Information”	means ESPO’s Confidential Information and/or the Service Provider's Confidential Information;
“Consistent Failure”	Means any of:

- a) two (2) or more failures by the Service Provider to comply with the Standards in any rolling period of twelve (12) Months;
- b) two (2) or more failures by the Service Provider to accept a Contract within two (2) working Days of receipt in any rolling period of twelve (12) Months;
- c) two (2) or more consecutive failures by the Service Provider to provide the Management Information by the Reporting Date at any time during the Term;

“Continuous Improvement Plan”

means a plan for improving the provision of the Goods and/or Services and/or reducing the charges produced by the Service Provider pursuant to Schedule 6 of the Framework Agreement;

“Contract”

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

“Contract Documents”

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

“Contract Year”

means each consecutive twelve (12) Month period during the Term commencing on the Commencement Date;

“Customer”

or plural, means the particular public body/contracting authority which is eligible to access the Goods and/or Services and has elected to do so;

“Customer Satisfaction Survey”

shall have the meaning set out in clause 18.1;

“Control”

means control as defined in section 1124 Corporation Tax Act 2010;

“Data Controller”

has the meaning set out under Data Protection Legislation;

“Data Processor”

has the meaning set out under Data Protection Legislation;

“Data Protection Legislation”	means the General Data Protection Regulation ((EU) 2016/679) (GDPR), the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK including the Data Protection Act 2018 and all applicable law about the processing of personal data and privacy;
“Data Subject”	has the meaning set out under Data Protection Legislation;
“Employment Checks”	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
“Equality Legislation”	means the Equality Act 2010 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;
“Equivalent Goods and/or Services”	shall have the meaning set out in clause 6.2;
“ESPO Representative”	means the representative appointed by ESPO from time to time in relation to this Framework Agreement;
“ESPO’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, Framework Service Providers and other Service Providers of ESPO or any Trading Company, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential;

“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 Event”

means any event, occurrence or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- 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, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- 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 to the Service Provider, the Service Provider’s Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and
 - ii) any event or occurrence which is attributable to a wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

“Form of Contract”

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

“Framework Agreement”

means the clauses of this Framework Agreement together with the Framework Schedules and annexes to it;

“Framework Price(s)”	means the price(s) applicable to the provision of the Goods and/or Services set out in Framework Schedule 2 (Charging Structure) and as may be varied from time to time in accordance with the provisions set out in Schedule 2 (Charging Structure);
“Framework Service Provider(s)”	means the Service Provider(s) (including the Service Provider) appointed under this Framework Agreement or agreements on the same or similar terms to this Framework Agreement as part of this Framework;
“Framework”	means these framework arrangements established by ESPO for the provision of the Goods and/or Services to Customers by Framework Service Providers;
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding;
“Further Competition Award Criteria”	means the award criteria set out in Framework Schedule 5 (Further Competition Award Criteria);
“Further Competition Procedure”	means the ordering procedure described in Paragraph 3 of Framework Schedule 4 (Ordering Procedure);
“General Change in Law”	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
“Goods and/or Services”	means the goods and/or services which the Service Provider shall make available to Customers specified in the Lots at Framework Schedule 1 (Goods and/or Services);
“Goods and/or Services Requirement”	means the requirements of ESPO or any Customer (as appropriate) for the Goods and/or Services from time to time;

“Guidance”	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations;
“Holding Company”	shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto;
“Indexation”	means the adjustment of an amount or sum in accordance with paragraph 3.5 of Framework Schedule 2 (Charging Structure);
“Indexation Adjustment Date”	has the meaning given in paragraph 3.5.1(a) of Framework Schedule 2 (Charging Structure);
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Intellectual Property Rights” or “IPR”	means: <ol style="list-style-type: none">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;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; andall other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
“Invitation to Tender” or “ITT”	means the Invitation to Tender issued by ESPO on 17 September 2020
“Key Personnel”	Means the individuals (if any) identified in accordance with Schedule 4;
“Know-How”	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Service Provider's or ESPO's possession before the Commencement Date;

“Law”	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply;
“Lot”	means any of the lots specified in Framework Schedule 1 (Goods and/or Services) to this Framework Agreement and “Lots” shall be construed accordingly;
“Management Information”	means the management information specified in Framework Schedule 7 (Management Information Requirements);
“Master Contract Schedule”	means the form set out in Framework Schedule 3 (Form of Contract and Call-Off Terms) to be used by a Customer to order Goods and/or Services (or subject to clause 3.7 hereof the Customers preferred alternative);
“Mediator”	shall have the meaning set out in clause 35.5.1;
“MI Default”	has the meaning in Framework Schedule 7 (Management Information);
“MI Report”	means a report containing Management Information submitted to ESPO in accordance with Framework Schedule 7 (Management Information);
“MI Reporting Template”	means the form of report set out in the Annex to Framework Schedule 7 (Management Information) setting out the information the Service Provider is required to supply to ESPO;
“MISO”	means ‘Management Information System Online’; an online portal that may be provided by ESPO for collection and receipt of Management Information;
“Mirror Framework”	means any framework agreement entered into by the Service Provider and a company owned by ESPO;
“Month”	means a calendar month and “monthly” shall be interpreted accordingly;
“OJEU Notice”	means the contract notice [OJEU reference number] dated [date], published in the Official Journal of the European Union;

“Ordered Goods and/or Services”	means Goods and/or Services which are the subject of a Contract by a Customer;
“Ordering Procedures”	means the ordering and award procedures specified in clause 6 (Formation of a Contract) and Framework Schedule 4 (Ordering Procedure);
“Parent Company”	means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider;
“Party”	means ESPO or the Service Provider and “Parties” shall be interpreted accordingly;
“Personal Data”	has the meaning set out under Data Protection Legislation;

“Prohibited Act”

means:

- 1) 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:
 - a) induce that person to perform improperly a relevant function or activity; or
 - b) reward that person for improper performance of a relevant function or activity; or
- 2) committing any offence:
 - a) under the Bribery Act 2010;
 - b) under legislation creating offences concerning fraudulent acts;
 - c) at common law concerning fraudulent acts relating to this Framework Agreement and/or any other contract with ESPO and/or Customer;
 - d) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer; or
 - e) involving slavery or human trafficking.

“Public Contracts Directive”

means Directive 2014/24/EU of the European Parliament and of the Council;

“Quality Measures”

means the measures of quality which apply to any Contract as set out in the Master Contract Schedule and/or any other Contract Document;

“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 Public Contracts Regulations 2015 and any amendment thereof;

“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 Framework Agreement or any other affairs of ESPO;
“Relevant Person”	means any employee, agent, servant, or representative of ESPO, any other public body or person employed by or on behalf of ESPO, or any other public body;
“Reporting Date”	means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;
“Requests for Information”	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
“Retrospective Rebate”	means the sum payable by the Service Provider to ESPO in accordance with the provisions of clause 16 being such an amount as is specified in paragraph 1 of Framework Schedule 2 (Charging Structure), throughout the Term and thereafter in respect of any extant Contract, including any Affected Rebate;
“Service Provider Representative”	means the representative appointed by the Service Provider from time to time in relation to this Framework Agreement;
“Service Provider’s Staff” or “Service Provider’s Personnel”	means all persons employed by the Service Provider together with the Service Provider's servants, agents, Service Providers and Sub-Contractors used in the performance of its obligations under this Framework Agreement or any Contracts;
“Service Provider's Confidential Information”	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Specification”	means the specification in the Lots at Framework Schedule 1 (Goods and/or Services);

“Specific Change in Law”	a Change in Law that relates specifically to the business of ESPO and which would not affect a Comparable Supply;
“Standard Goods and/or Services”	means the standard Goods and/or Services referred to in Framework Schedule 1 (Goods and/or Services);
“Standards”	means the British or international standards, ESPO’s internal policies and procedures, Government codes of practice and guidance referred to in Framework Schedule 1 (Goods and/or Services) together with any other specified policies or procedures identified in Framework Schedule 1 (Goods and/or Services);
“Statement of Requirements”	means a statement issued by ESPO or any Customer detailing its Goods and/or Services requirement issued in accordance with the Ordering Procedure;
“Statement of Work”	means the statement submitted by a Framework Service Provider as part of a further competition as described in Framework Schedule 4 (Ordering Procedure);
“Sub-Contract”	means any contract or agreement or proposed agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods and/or Services or any part thereof or facilities or goods and/or services necessary for the provision of the Goods and/or Services or any part thereof;
“Sub-Contractor”	any person engaged by the Service Provider in connection with the provision of the Goods and/or Services from time to time as may be permitted by this Framework Agreement;
“Subsidiary”	has the meaning given to it in section 1159 of the Companies Act 2006;
“Tender”	means the tender submitted by the Service Provider to ESPO on [date];
“Term”	has the meaning in clause 2 of this Framework Agreement;
“TFEU”	means the Treaty on the Functioning of the European Union (OJ No. C 115);
“Third Party”	shall have the meaning set out in clause 37.1;

"Trading Company"	means any wholly owned company appointed by ESPO in accordance with clause 14A.1;
"Treaties"	means the Treaty of the European Union (OJ No. C 115) and the TFEU;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Days"	means any day other than a Saturday, Sunday or public holiday in England and Wales; and
"Year"	means a calendar year.

- 1.2 The interpretation and construction of this Framework Agreement shall all 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 and vice versa;
 - 1.2.3 the words "include", "includes" "including" "for example" and "in particular" and words of similar effect shall be construed as if they were immediately followed by the words "without limitation";
 - 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 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;
 - 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - 1.2.7 references in this Framework Agreement to any clause or Framework Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
 - 1.2.8 references in this Framework Agreement to any Paragraph or Sub-Paragraph without further designation shall be construed as a reference to the Paragraph or sub-Paragraph of the relevant Framework Schedule to this Framework Agreement so numbered;

- 1.2.9 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.10 in the event and to the extent only of any conflict between the clauses and the remainder of the Framework Schedules, the clauses shall prevail over the remainder of the Framework Schedules.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2. TERM OF FRAMEWORK AGREEMENT

- 2.1 This Framework Agreement shall take effect on the Commencement Date and shall continue, unless terminated earlier in accordance with the terms of this Framework Agreement or otherwise by operation of Law for two (2) years (**Initial Term**), when it shall terminate automatically without notice unless, no later than three (3) months before the end of the Initial Term (or any extended period agreed under this clause), the parties agree in writing that the term of the Framework Agreement shall be extended for a maximum period of two (2) years (**Extended Term**) unless it is terminated earlier in accordance with the terms of this Framework Agreement, the Framework Agreement shall terminate automatically without notice at the end of the Extended Term.

3. SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between ESPO and the Service Provider in respect of the provision of the Goods and/or Services by the Service Provider to ESPO and/or to Customers.
- 3.2 ESPO and/or Customers may, at their absolute discretion and from time to time during the Term, order Goods and/or Services from the Service Provider in accordance with the Ordering Procedures.
- 3.3 The Service Provider acknowledges that there is no obligation whatsoever on ESPO or on any Customer to invite or select the Service Provider to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Framework Agreement.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by ESPO or any Customer in respect of the total quantities or values of the Goods and/or Services to be ordered by them pursuant to this Framework Agreement and the Service Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.5 Any additions or amendments to Goods and/or Services specified in Schedule 1 shall be subject to Approval.
- 3.6 The Service Provider acknowledges that each Customer is independently responsible for the conduct of its award of the Contract under this Framework Agreement and that ESPO is not responsible or accountable for and shall have no liability whatsoever in relation to:

- 3.6.1 the conduct of a Customer in relation to this Framework Agreement;
or
 - 3.6.2 the performance or non-performance of any of the Contracts between the Service Provider and the Customer entered into pursuant to this Framework Agreement.
- 3.7 In the event that a Customer considers it necessary to enter into a Contract with the Service Provider as a deed the Service Provider agrees that it shall do so.

4. SERVICE PROVIDER'S APPOINTMENT

- 4.1 In consideration of:
- 4.1.1 the Parties' respective obligations herein ESPO appoints the Service Provider as a potential provider of the Goods and/or Services; and/or
 - 4.1.2 the payment by ESPO to the Service Provider of the sum of £1 (whether tendered or not)

the Service Provider shall be eligible to be considered for the award of Contracts for such Goods and/or Services by ESPO and Customers during the Term.

5. NON-EXCLUSIVITY

- 5.1 The Service Provider acknowledges that in entering into this Framework Agreement no form of exclusivity or volume guarantee has been granted by ESPO and Customers for the purchase of Goods and/or Services from the Service Provider and that ESPO and Customers are at all times entitled to enter into other contracts and agreements with other Service Providers for the provision of any or all services or goods which are the same as or similar to the Goods and/or Services.

6. FORMATION OF A CONTRACT

- 6.1 If ESPO or any Customer decides to source the Goods and/or Services through this Framework then each Customer shall be entitled at any time, during the Term to enter into a Contract with the Service Provider for the supply of the Goods and/or Services in accordance with Framework Schedule 4 (Ordering Procedure).
- 6.2 In the event that any Customer makes an approach to the Service Provider with a request for the supply of goods and/or services which are the same as or similar to the Goods and/or Services ("**Equivalent Goods and/or Services**"), the Service Provider shall promptly and in any event within five (5) Working Days of the request by the Customer, and before any supply of Equivalent Goods and/or Services is made, inform such Customer of the existence of this Framework and its ability to place Contracts for the Goods and/or Services pursuant to it.

PART TWO: SERVICE PROVIDER'S GENERAL FRAMEWORK OBLIGATIONS

7. WARRANTIES, REPRESENTATIONS AND GUARANTEES

- 7.1 The Service Provider warrants, represents and undertakes to ESPO that:
- 7.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
 - 7.1.2 this Framework Agreement is executed by a duly authorised representative of the Service Provider;
 - 7.1.3 in entering into this Framework Agreement and any Contract it has not committed any Fraud;
 - 7.1.4 all information, statements, warranties and representations contained in the Tender and (unless otherwise agreed) any other document which resulted in the award of this Framework for the Goods and/or Services are true, accurate, and not misleading save as may have been specifically disclosed in writing to ESPO prior to the execution of this Framework Agreement and it will promptly advise ESPO 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;
 - 7.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Framework;
 - 7.1.6 it has not caused or induced any person to enter such agreement referred to in clause 7.1.5 above;
 - 7.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Goods and/or Services under this Framework;
 - 7.1.8 it has not in any other way breached the Bribery Act 2010 or the Section 117(2) of the Local Government Act 1972;
 - 7.1.9 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 any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and/or any Contract which may be entered with ESPO or Customers;

- 7.1.10 it is not subject to any contractual obligation, compliance with which will be likely to have an effect on its ability to perform its obligations under this Framework Agreement and/or any Contract which may be entered with ESPO or Customers;
- 7.1.11 in connection with the exercise of its rights and performance of its obligations pursuant to this Framework Agreement it will at all times use all reasonable endeavours to meet or exceed the Key Performance Indicators as set out in Annex A of Schedule 10 (Framework Management including service levels and key performance indicators);
- 7.1.12 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of their knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 7.1.13 in the three (3) Years prior to the date of this Framework Agreement (or, if the Service Provider has been in existence for less than three (3) Years, in the whole of such shorter period) it has:
 - (a) conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Service Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement; and
- 7.1.14 at the Commencement Date it has not been convicted of any offence involving slavery and human trafficking; nor has it 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.
- 7.2 Each time a Contract is entered into the warranties, representations and undertakings in clause 7.1 shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time that they are deemed to be repeated.
- 7.3 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination ESPO may have in respect of breach of that provision by the Service Provider.

7.4 The Service Provider acknowledges and agrees that:

- 7.4.1 the warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce ESPO into entering into this Framework Agreement and to induce ESPO and each and every Customer to enter into a Contract;
- 7.4.2 ESPO has been induced into entering into this Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained in this Framework Agreement; and
- 7.4.3 each Customer will (amongst other things) on each and every occasion that it enters into a Contract be induced into doing so by, and in being so induced shall rely upon, the warranties, representations and undertakings contained in this Framework Agreement.
- 7.4.4 The Goods supplied to ESPO and/or the Customer shall:
 - 7.4.4.1 conform to the Specification;
 - 7.4.4.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for the purpose held out by the Service Provider or made known to the Service Provider by ESPO and/or the Customer; and
 - 7.4.4.3 be free from defects in design, material and workmanship and remain so for a minimum of 12 months or such longer period as may be provided by the Service Provider and/or the manufacturer of the Goods unless otherwise agreed.

8. FRAMEWORK AGREEMENT MANAGEMENT

- 8.1 The Parties shall manage this Framework Agreement in accordance with Schedule 10 (Framework management including service levels and key performance indicators).

9. PREVENTION OF BRIBERY AND CORRUPTION

- 9.1 The Service Provider shall not:
 - 9.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of ESPO or the Customer, or any other public body or person employed by or on behalf of ESPO or the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Framework Agreement or any other contract with any Relevant Person;
 - 9.1.2 engage in and shall procure that all Service Provider's Staff, consultants, agents or Sub-contractors or any person acting on the Service Provider's behalf shall not commit, in connection with this Framework Agreement, 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
- 9.1.3 commit any offences under Section 117 (2) of the Local Government Act 1972.
- 9.2 The Service Provider warrants, represents and undertakes to ESPO and its Customers that it has not:
- 9.2.1 in entering into this Framework Agreement, it has not breached the undertakings in clause 9.1. Each time a Contract is entered into this warranty shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time that the warranty is deemed to be repeated; and
- 9.2.2 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with this Framework Agreement; and
- 9.2.3 entered into this Framework Agreement with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by ESPO or the Customer or any other public body or any person employed by or on behalf of ESPO or the Customer in connection with this Framework Agreement, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Framework Agreement;
- 9.3 The Service Provider shall:
- 9.3.1 in relation to this Framework Agreement, act in accordance with any published policy of ESPO or the Customer in relation to the Bribery Act 2010;
- 9.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause;
- 9.3.3 respond promptly to any of ESPO's or the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause and the Service Provider shall co-operate with any investigation and allow ESPO to audit the Service Provider's books, records and any other relevant documentation in connection with the breach.
- 9.4 Any audit conducted pursuant to clause 9.3.3 shall be in addition to the number of audits permitted under clause 17 of this Framework Agreement.
- 9.5 If the Service Provider, its Staff, consultants, agents or Sub-contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:

- 9.5.1 this clause 9; or
- 9.5.2 the Bribery Act 2010 in relation to this Framework Agreement or any other contract with ESPO or the Customer or any person employed by or on behalf of ESPO or the Customer or any Relevant Person,

ESPO shall be entitled to terminate this Framework Agreement and each Contract by written notice with immediate effect in accordance with clause 26.1 (Termination on Corruption).

- 9.6 Without prejudice to its other rights and remedies under this clause, ESPO and the Customer shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify ESPO in full from and against:
 - 9.6.1 the amount of value of any such gift, consideration or commission; and
 - 9.6.2 any other loss sustained by in consequence of any breach of this clause 9.1.
- 9.7 For the avoidance of doubt, the Parties agree that the Retrospective Rebate payable in accordance with clause 16 does not constitute a payment of commission for the purposes of this clause.

10. CONFLICTS OF INTEREST

- 10.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any of the Service Provider's Staff are placed in a position where (in the reasonable opinion of ESPO) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or the Service Provider's Staff and the duties owed to ESPO and Customers under the provisions of this Framework Agreement or any Contract.
- 10.2 The Service Provider shall promptly notify and provide full particulars to ESPO or the relevant Customer if such conflict referred to in clause 10.1 above arises or may have reasonably been foreseen as arising.
- 10.3 ESPO reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of ESPO, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to ESPO under the provisions of this Framework Agreement or any Contract. The action of ESPO pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to ESPO.
- 10.4 This clause shall apply during the Term and for a period of two (2) Years after the later of termination or expiry of this Framework Agreement and the termination or expiry of the last Contract.

11. SAFEGUARD AGAINST FRAUD

- 11.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity (including Fraud) by the Service Provider and the Service Provider's Staff (including its shareholders holding in excess of 50% of the entire issued share capital of the Service Provider, members, directors).
- 11.2 The Service Provider shall notify ESPO immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur save where complying with this provision would cause the Service Provider or its employees to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 11.3 If the Service Provider or the Service Provider's Staff commits Fraud in relation to this Framework Agreement, a Contract and/or any other contract with ESPO, ESPO may:
 - 11.3.1 terminate this Framework Agreement with immediate effect by giving the Service Provider notice in writing, and recover from the Service Provider the amount of any loss suffered by ESPO resulting from the termination, including the cost reasonably incurred by ESPO of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by ESPO throughout the remainder of the Term; or
 - 11.3.2 recover in full from the Service Provider and the Service Provider shall on demand indemnify ESPO in full from and against any other loss sustained by ESPO in consequence of any breach of this clause.

12. CONTRACT PERFORMANCE

- 12.1 The Service Provider shall perform all its obligations under all Contracts entered into with ESPO or any Customer:
 - 12.1.1 in accordance with the requirements of this Framework Agreement;
 - 12.1.2 in accordance with the terms and conditions of the respective Contract;
 - 12.1.3 in accordance with Good Industry Practice;
 - 12.1.4 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and
 - 12.1.5 in compliance with all applicable Law.
- 12.2 The Service Provider shall draw any conflict between any of the requirements of sub-clauses 12.1.1 or 12.1.2 and those of sub-clause 12.1.3 to the attention of ESPO and shall comply with ESPO's decision on the resolution of that conflict.

- 12.3 For the purposes of sub-clause 12.1 if there is any conflict between the requirements of this Framework Agreement and the terms and conditions of the respective Contract the conflict shall be resolved in accordance with the following order of precedence:
- 12.3.1 this Framework Agreement (excluding Framework Schedule 3);
 - 12.3.2 Framework Schedules 1- 2, 4-10;
 - 12.3.3 the Form of Contract
 - 12.3.4 the Call-Off Terms;
 - 12.3.5 the Master Contract Schedule;
 - 12.3.6 any other Contract Document (not including this Framework Agreement).
- 12.4 In performing its obligations under this Framework Agreement, the Service Provider shall:
- 12.4.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and the Anti-slavery Policy;
 - 12.4.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - 12.4.3 include in contracts with its Service Providers and any Sub-Contractors provisions which are at least as onerous as those set out in this clause 12.4;
 - 12.4.4 implement a system of training for Service Provider's Staff to ensure compliance with the Anti-slavery Policy and shall keep a record of all training offered and completed by Service Provider's Staff to ensure compliance with the Anti-slavery Policy and shall make a copy of the record available to ESPO and each Customer on request; and
 - 12.4.5 notify ESPO as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Framework Agreement.

13. STATUTORY REQUIREMENTS AND STANDARDS

- 13.1 The Service Provider shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Framework Agreement and any Contract.
- 13.2 The Service Provider shall comply with the Standards in performing its obligations under this Framework Agreement.

- 13.3 Where the provision of the Goods and/or Services requires any of the Service Provider's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Service Provider will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Children's Barred List relating to the protection of children.
- 13.4 The Service Provider will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.
- 13.5 The Service Provider will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.
- 13.6 The Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups Act 2006 and will notify ESPO immediately of any decision to employ such a person in any role connected with this Framework Agreement or any other agreement or arrangement with ESPO.
- 13.7 Where the provision of the Goods and/or Services does not require any of the Service Provider's employees or volunteers to work in a Regulated Activity but where the Service Provider's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider will in respect of such employees and volunteers:
 - 13.7.1 carry out Employment Checks; and
 - 13.7.2 carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Term.
- 13.8 Neither the Service Provider nor any Sub-Contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises of ESPO or ESPO's customers. The Service Provider shall ensure that those engaged in undertaking the duties under this Framework Agreement, including employees, servants, agents and others are of suitable standing and good character.

14A. WHOLLY OWNED COMPANY

- 14A.1 ESPO (or any of its constituent local authorities) may, at any time during the term of this Framework Agreement establish and appoint a wholly owned company ("Trading Company") to administer and manage the Framework Agreement on behalf of ESPO for certain Customers.

14A.2 If, pursuant to clause 14A.1, ESPO elects to use the Trading Company, ESPO will give written notice to the Service Provider confirming when such election is to take effect from and will confirm the details of the Customers which will be affected (the "Affected Customers").

14A.3 Save as otherwise set out in this Framework Agreement the establishment of a Trading Company will not affect the terms of this Framework Agreement and the provisions of Schedule 4 will continue to apply to the award of Contracts by the Affected Customers and all other Customers.

14. NON-DISCRIMINATION

- 14.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 14.2 The Service Provider shall take all reasonable steps to secure the observance of clause 14.1 by all Staff employed in performance of this Framework Agreement.
- 14.3 The Service Provider shall notify ESPO forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other law, enactment, order or regulation.
- 14.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of this Framework Agreement being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Service Provider's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider's Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 14.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Service Provider, its agents or Sub-Contractors, or the Service Provider's Staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify ESPO with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment ESPO may have been ordered or required to pay to a third party.

- 14.6 The Service Provider must ensure that all written information produced or used in connection with this Framework Agreement is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 14.7 The Service Provider acknowledges that any Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Good and/or Services and the Service Provider shall provide all necessary assistance and information to ESPO as may be required in relation to the performance of an impact analysis by ESPO. The Service Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by ESPO.
- 14.8 The Service Provider shall ensure that all employees of the Service Provider are eligible to work in the United Kingdom.

PART THREE: SERVICE PROVIDER'S INFORMATION AND PAYMENT OBLIGATIONS

15. PROVISION OF MANAGEMENT INFORMATION

- 15.1 The Service Provider shall, at no charge to ESPO, submit to ESPO complete and accurate Management Information in accordance with the provisions of the Framework Schedule 7 (Management Information Requirements).
- 15.2 The Service Provider grants ESPO a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to use and to share with any Trading Company, Customers or Relevant Person any Management Information supplied to ESPO for ESPO's normal operational activities including monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
- 15.3 In the event ESPO shares the Management Information any Trading Company or any Customer receiving such information shall be informed of the sensitive nature of that information and shall be requested not to disclose it to Customers (unless required to do so by Law).

16. ESPO COST RECOVERY/RETROSPECTIVE REBATE

- 16.1 In consideration of the award of this Framework Agreement and the management and administration by ESPO of the procurement and contract management, the Service Provider shall, subject to clause 16.9, pay to ESPO the Retrospective Rebate in accordance with clause 16.2.
- 16.2 ESPO shall submit invoices to the Service Provider in respect of the Retrospective Rebate due quarterly based on the Management Information provided pursuant to Framework Schedule 7 (Management Information Requirements), and adjusted pursuant to paragraph 4 of Framework Schedule 7 (Management Information Requirements) to take into account any under payment of the Retrospective Rebate.
- 16.3 The Service Provider shall pay the amount stated in any invoice submitted under clause 16.2 within thirty (30) Working Days of the date of issue of the invoice.

- 16.4 All Retrospective Rebate shall be paid by the Service Provider to ESPO without any set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 16.5 The Retrospective Rebate shall apply to the full value of the Goods and/or Services as specified in each and every Contract and shall not be varied as a result of any reduction in the Charges due to the application of any service credits and/or any other deductions made under any Contract.
- 16.6 The Retrospective Rebate shall be exclusive of VAT. The Service Provider shall pay the VAT on the Retrospective Rebate at the rate and in the manner prescribed by Law from time to time.
- 16.7 Interest shall be payable on any late payments of the Retrospective Rebate under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any amendment thereof.
- 16.8 The Retrospective Rebate shall remain payable throughout the duration of any (one or more) Contracts irrespective of the termination for any reason of this Framework Agreement including the effluxion of time and for the avoidance of doubt whether or not the Service Provider succeeds in being awarded any subsequent Service Provider status on renewal of this Framework Agreement.
- 16.9 ESPO may as part of the appointment of a Trading Company pursuant to clause 14A.1 assign to the Trading Company the right to receive the Retrospective Rebate for the Contracts entered into by Affected Customers (the "Affected Rebate"). To this end:
 - 16.9.1 the Trading Company shall submit invoices to the Service Provider in respect of the Affected Rebate due monthly based on the Management Information provided pursuant to Framework Schedule 7 (Management Information Requirements) and adjusted pursuant to paragraph 4 of Framework Schedule 7 (Management Information Requirements) to take into account any under payment of the Affected Rebate;
 - 16.9.2 the Service Provider shall pay the amount stated in any invoice submitted under clause 16.9.1 within thirty (30) Working Days of the date of issue of the invoice;
 - 16.9.3 all Affected Rebate shall be paid by the Service Provider to the Trading Company without any set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law);
 - 16.9.4 the Affected Rebate shall apply to the full value of the Goods and/or Services as specified in each and every Contract entered into by the Affected Customers and shall not be varied as a result of any reduction in the Charges due to the application of any service credits and/or any other deductions made under any Contract;

16.9.5 the Affected Rebate shall be exclusive of VAT and the Service Provider shall pay the VAT on the Affected Rebate at the rate and in the manner prescribed by Law from time to time;

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

16.9.7 the Affected Rebate shall remain payable throughout the duration of any (one or more) Contracts irrespective of the termination for any reason of this Framework Agreement including the effluxion of time and for the avoidance of doubt whether or not the Service Provider succeeds in being awarded any subsequent Service Provider status on renewal of this Framework Agreement.

16.10 This clause 16 shall be directly enforceable under the Contracts (rights of Third Parties) Act 1999 by any Trading Company.

17. RECORDS AND AUDIT ACCESS

17.1 The Service Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or such other longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Goods and/or Services provided under it, the Contracts entered into with Customers, the amounts paid by each Customer and records to trace the supply chain of all Goods and/or Services provided to each Customer in connection with each Contract entered into with Customers.

17.2 The Service Provider shall keep the records and accounts referred to in clause 17.1 above in accordance with Good Industry Practice.

17.3 The Service Provider shall afford ESPO (or relevant Customer) and/or ESPO's representatives ("Auditors") access to the records and accounts referred to in clause 17.1 at the Service Provider's premises and/or provide copies of such records and accounts and/or permit Auditors to meet the Service Provider's Staff, as may be required by ESPO (or relevant Customer) from time to time, in order that ESPO (or relevant Customer) may carry out an inspection including for the following purposes:

17.3.1 to verify the accuracy of the Charges (and proposed or actual variations to them in accordance with this Framework Agreement), and/or the costs of the Service Provider (including Sub-Contractors);

17.3.2 to review the Service Provider's compliance with its continuous improvement obligations and its benchmarking obligations set out in Framework Schedule 6;

17.3.3 to review any books of account kept by the Service Provider in connection with the provision of the Goods and/or Services; and/or

17.3.4 to ensure that the Service Provider is complying with its obligations under this Framework Agreement and any Contract, including but not limited to its obligations thereunder relating to the Modern Slavery Act 2015 and the Anti-slavery Policy.

Each such inspection shall be an "Audit".

17.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) on request during the Term and for a period of six (6) years after expiry of the Term to ESPO (or relevant Customer) and its internal and external auditors.

17.5 ESPO shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Goods and/or Services pursuant to the Contracts, save insofar as the Service Provider accepts and acknowledges that control over the conduct of Audits carried out by the National Audit Office is outside of the control of ESPO (or relevant Customer).

17.6 Subject to ESPO's (or relevant Customer's) obligations of confidentiality, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including:

17.6.1 all information requested by the Auditor within the scope of the Audit;

17.6.2 reasonable access to any sites controlled by the Service Provider and to equipment used in the provision of the Goods and/or Services (and/or Ordered Goods and/or Services as appropriate); and

17.6.3 access to the Service Provider's Staff.

17.7 If an Audit reveals that the Service Provider has underpaid an amount equal to or greater than one per cent (1%) of the Retrospective Rebate due then the Service Provider shall reimburse ESPO its reasonable costs incurred in relation to the Audit.

17.8 If an Audit reveals:

17.8.1 that the Service Provider has underpaid an amount equal to or greater than five per cent (5%) of the Retrospective Rebate due;

17.8.2a material default; and/or

17.8.3a Consistent Failure;

ESPO shall (in addition to the right in clause 17.7) be entitled to exercise its rights to terminate this Framework Agreement pursuant to clause 26.

17.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 17, unless the Audit reveals a material default by the Service Provider in which case

the Service Provider shall reimburse ESPO for ESPO's reasonable costs incurred in relation to the Audit.

18. CUSTOMER SATISFACTION MONITORING

- 18.1 ESPO may from time to time undertake (or procure the undertaking of) a Customer satisfaction survey ("**Customer Satisfaction Survey**") the purpose of which shall include:
- 18.1.1 assessing the level of satisfaction among Customers with the supply of Goods and/or Services (including the way in which the Goods and/or Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the supply of the Ordered Goods and/or Services;
 - 18.1.2 monitoring the compliance by the Service Provider with this Framework Agreement; and
 - 18.1.3 such other assessment as it may deem appropriate for monitoring Customer satisfaction.
- 18.2 ESPO and any Customer shall be entitled, but not obliged, to use the results of the Customer Satisfaction Survey to make decisions under or in relation to this Framework Agreement, the Contracts and any other contract between the Customer and the Service Provider.

19. CONFIDENTIALITY

- 19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:
- 19.1.1 treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 19.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Framework Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Framework Agreement.
- 19.2 The Service Provider shall take all necessary precautions to ensure that all of ESPO's Confidential Information obtained under or in connection with this Framework Agreement:
- 19.2.1 is given only to the Service Provider's Staff engaged to advise it in connection with this Framework Agreement as is strictly necessary for the performance of this Framework Agreement; and

- 19.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any Service Provider's Staff otherwise than for the purposes of this Framework Agreement.
- 19.3 The Service Provider shall ensure that the Service Provider's Staff are aware of the Service Provider's confidentiality obligations under this Framework Agreement and shall use its best endeavours to ensure that the Service Provider's Staff comply with the Service Provider's confidentiality obligations under this Framework Agreement.
- 19.4 At the written request of ESPO (which shall not be made unreasonably), the Service Provider shall procure that members of the Service Provider's Staff whom ESPO may identify from time to time, sign a confidentiality undertaking in a form acceptable to ESPO prior to commencing any work in accordance with this Framework Agreement.
- 19.5 The Service Provider shall not, and shall procure that the Service Provider Staff do not, use any of ESPO's Confidential Information received otherwise than for the purposes of this Framework Agreement.
- 19.6 In the event that any default, act or omission of any Service Provider's Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Framework Agreement, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any of the Service Provider's Staff, the Service Provider shall provide such evidence to ESPO as ESPO may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Service Provider is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Service Provider's Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Service Provider's Staff in connection with obligations as to confidentiality.
- 19.7 The provisions of clauses 19.1 to 19.5 shall not apply to any Confidential Information received by one Party from the other which:
- 19.7.1 is or becomes public knowledge (otherwise than by breach of this clause 19);
- 19.7.2 was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 19.7.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 19.7.4 is independently developed without access to the Confidential Information; or

- 19.7.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under clause 20 (Transparency) and/or the FOIA, or the Environmental Information Regulations pursuant to clause 22 (Freedom of Information).
- 19.8 Nothing in this Framework Agreement shall prevent ESPO from disclosing the Service Provider's Confidential Information (including the Management Information obtained under clause 15):
 - 19.8.1 for the purpose of the examination and certification of ESPO's accounts or the accounts of any Trading Company;
 - 19.8.2 for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which ESPO has used its resources;
 - 19.8.3 to any Trading Company; or
 - 19.8.4 to any government department or any Customer and the Service Provider hereby acknowledges that all Customers receiving such Service Provider's Confidential Information may further disclose the Service Provider's Confidential Information to other government departments or Customers on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Customer.
- 19.9 The Service Provider acknowledges and agrees that information relating to Contracts placed by a Customer, including service levels, pricing information (which includes information on prices tendered in a further competition, even where a Contract is not entered into) and the terms of any Contract may be shared with any Customer from time to time. ESPO shall use reasonable endeavours to notify the recipient of such information that its contents are confidential.
- 19.10 Nothing in clauses 19.1 to 19.5 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under this Framework Agreement or any Contracts in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 19.11 In the event that the Service Provider fails to comply with clauses 19.1 to 19.5, ESPO reserves the right to terminate this Framework Agreement with immediate effect by notice in writing.
- 19.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Framework Agreement or Contracts, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

19.13 The Service Provider will immediately notify ESPO of any breach of security in relation to ESPO's Confidential Information obtained in the performance of this Framework Agreement and all Contracts and will keep a record of such breaches. The Service Provider will use its best endeavours to recover such ESPO's Confidential Information however it may be recorded. This obligation is in addition to the Service Provider's obligations under clauses 19.1 to 19.5. The Service Provider will co-operate with ESPO in any investigation that ESPO considers necessary to undertake as a result of any breach of security in relation to ESPO's Confidential Information.

19.14 The Service Provider shall, at its own expense, alter any security systems used in connection with the performance of this Framework Agreement or all Contracts at any time during the Term at ESPO's request if ESPO believes (acting reasonably) the Service Provider has failed to comply with clause 19.12.

20. TRANSPARENCY

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

20.2 Notwithstanding any other term of this Framework Agreement, the Service Provider hereby gives his consent for ESPO to publish this Framework Agreement in its entirety, (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to this Framework Agreement, to the general public.

20.3 ESPO may consult with the Service Provider to inform its decision regarding any exemptions under clause 20.1 but ESPO shall have the final decision in its absolute discretion.

20.4 The Service Provider shall assist and cooperate with ESPO to enable ESPO to publish this Framework Agreement.

21. DATA PROTECTION

21.1 ESPO and the Service Provider acknowledge that each Party is individually a Data Controller in respect of any Personal Data processed by it and each agrees to comply with its obligations under Data Protection Legislation accordingly.

21.2 The Parties agree that it is necessary to exchange limited Personal Data for the purpose of fulfilling the Parties' obligations under this Framework Agreement and that they shall each ensure their full compliance with Data Protection Legislation.

21.3 The Service Provider shall and shall procure that any of the Service Provider's Staff involved in the provision of this Framework Agreement and any Sub-Contractor shall comply with their obligations under Data Protection Legislation and shall enter into appropriate arrangements with third parties.

- 21.4 Upon the termination or expiry of this Framework Agreement each Party shall ensure that all Personal Data held by it shall be up-to-date and accurate. Where it is necessary in order for the efficient transition of services to the other Party or to a third party to be achieved then the transferring Party shall, having first satisfied itself that such transfer is compliant with all laws, transfer current and required Personal Data to the other Party or to the third party in a secure manner and shall take all reasonable steps, at its own cost, to provide the Personal Data in a usable and compatible format.
- 21.5 Historical personal data shall be retained by the Service Provider in accordance with legal retention requirements. Personal Data which cannot be lawfully retained shall be securely deleted in accordance with Data Protection Legislation.
- 21.6 For the avoidance of doubt, neither Party is a Data Processor on behalf of the other Party in furtherance of its obligations under this Framework Agreement. In the event it is established at any time during this Framework Agreement that Personal Data is to be processed by the Service Provider under this Framework Agreement on behalf of ESPO then the Service Provider shall immediately enter into a data processing agreement with ESPO on reasonable terms to be determined by ESPO to ensure full compliance with Data Protection Legislation.
- 21.7 Failure by the Service Provider to enter into a data processing agreement in accordance with clause 21.6 shall be deemed a material breach which shall entitle ESPO to immediately terminate this Framework Agreement without consequence or any liability under this Framework Agreement.
- 21.8 Any clause in this Framework Agreement limiting the Service Provider's liability in respect of any obligations, claims, losses, damages, liabilities, fines, penalties or otherwise under the Data Protection Legislation and/or this clause 21 shall not apply.
- 21.9 Each Party (the indemnifying Party) agrees to fully indemnify and keep indemnified the other Party against all costs, claims, damages, liabilities, fines, penalties, interest, expenses or otherwise incurred by the other Party or for which the other Party may become liable due to any failure by the indemnifying Party or its employees, agents, Sub-Contractors or otherwise to comply with their obligations under this clause 21.
- 21.10 The provisions of this clause shall apply during the continuance of this Framework Agreement and indefinitely after its expiry or termination.

22. FREEDOM OF INFORMATION

- 22.1 The Service Provider acknowledges that ESPO, any Trading Company and their Customers are subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 and shall assist and co-operate with ESPO and its Customers to enable ESPO, any Trading Company and their Customers to comply with their Information disclosure obligations.

- 22.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 22.2.1 transfer to ESPO and its Customers all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 22.2.2 provide ESPO and its Customers with a copy of all Information, relevant to a Request for Information, in its possession or power, in the form that ESPO and its Customers request within five (5) Working Days (or such other period as ESPO and its Customers may specify) of ESPO's and its Customers' request; and
 - 22.2.3 provide all necessary assistance reasonably requested by ESPO and its Customers to enable ESPO and its Customers to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 22.3 ESPO and its Customers shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 22.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by ESPO and its Customers.
- 22.5 The Service Provider acknowledges that (notwithstanding the provisions of this clause ESPO and its Customers may, acting in accordance with Part 1 of the FOIA or the Environmental Information Regulations be obliged to disclose information concerning the Service Provider or the Goods and/or Services:
- 22.5.1 in certain circumstances without consulting the Service Provider; or
 - 22.5.2 following consultation with the Service Provider and having taken their views into account, provided always that where clause 22.5 applies ESPO and its Customers shall take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 22.6 The Service Provider shall ensure that all Information is retained for disclosure in accordance with clause 17 (Records and Audit Access) and shall permit ESPO and its Customers to inspect such records as requested from time to time.
- 22.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in Framework Schedule 9 (Commercially Sensitive Information) is of indicative value only and that ESPO and its Customers may be obliged to disclose it in accordance with clause 22.5.

23. PUBLICITY AND MARKETING

- 23.1 Subject to clause 23.4 the Service Provider shall not make any press announcements or publicise this Framework Agreement or its contents in any way without ESPO's prior written Approval.
- 23.2 ESPO shall be entitled to and will publicise this Framework Agreement.
- 23.3 The Service Provider shall not do anything or cause anything to be done, which may damage the reputation of ESPO and its Customers or bring ESPO and its Customers into disrepute.
- 23.4 The Service Provider shall undertake marketing of this Framework Agreement and the Goods and/or Services to Customers in accordance with the provisions of Framework Schedule 8 (Marketing) during the Term.

24. USE OF BRAND NAMES

- 24.1 The Service Provider hereby acknowledges that its tender has been submitted and accepted on the understanding that where specific brand or trade names are mentioned within the item descriptions and specifications, this should not be taken to imply that other brands or makes of product would be unacceptable. Rather it is simply an indication of the brands currently being purchased and which have proved to be acceptable for ESPO. Service Providers may offer alternative brands which meet the stated requirements.
- 24.2 The Service Provider further acknowledges and agrees that ESPO may use the brand or trade names and/or literary descriptions that may be provided of Goods and/or Services supplied or to be supplied in the communication of information about this Framework Agreement all of its customers who are eligible to access the Goods and/or Services under Framework Agreement. Such communication may include, inter alia, documents published periodically by ESPO.
- 24.3 In the event that the Service Provider ceases (for any reason) to supply the Goods and/or Services within the terms of this Framework Agreement (for example if the Service Provider applies to make an unacceptable variation to this Framework Agreement), or fails on expiry of this Framework Agreement to secure an award on the new supply arrangement, the Service Provider accepts that ESPO gives no guarantee that brand or trade names previously published in the manner described in clause 24.2 above will be withdrawn or deleted except in the course of the normal publication and distribution procedures carried out by ESPO.
- 24.4 The above provisions will prevail whether or not the Service Provider is the owner of the brand(s) or trade name(s) concerned.
- 24.5 Where the Service Provider is not the owner of the brand(s) or trade name(s) concerned the Service Provider warrants that he has secured the owners' agreement to their use as described above and agrees to indemnify ESPO against any expense, liability, loss, claim or proceedings whatsoever arising from

the use by ESPO of such brand(s) or trade name(s) for general information purposes as described above.

25. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

- 25.1 Save as granted under this Framework Agreement, neither ESPO nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 25.2 The Service Provider shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 25.3 With respect to the Service Provider's obligations under this Framework Agreement, the Service Provider warrants and represents that:
- 25.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Framework Agreement, and any Contract which may be entered with ESPO or Customers and shall maintain the same in full force and effect;
- 25.3.2 it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or ESPO's Confidential Information (held in electronic form) owned by or under the control of, or used by ESPO and/or Customers;
- 25.4 The Service Provider shall during and after the Term of this Framework Agreement indemnify and keep indemnified ESPO on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 25.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
- 25.4.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 25.5 The Service Provider shall promptly notify ESPO if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.

- 25.6 If a claim or demand is made or action brought to which clause 25.3 and/or 25.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
- 25.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services and such substitution shall not increase the burden on Customers to a Contract; or
 - 25.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to ESPO; and
 - 25.6.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

PART FOUR: FRAMEWORK AGREEMENT AND/OR CONTRACT TERMINATION AND SUSPENSION

26. TERMINATION

Termination on Corruption

- 26.1 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from the date specified in such notice where the conduct prohibited in clauses 9.1 or 9.2 (Prevention of Bribery and Corruption) has occurred.

Termination in relation to Conflict of Interest

- 26.2 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from the date specified in the notice pursuant to clause 10.3 (Conflict of Interest).

Termination in relation to Fraud

- 26.3 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from the date specified in the notice where the conduct prohibited in clause 11.3 (Safeguard against Fraud) has occurred.

Termination on Breach of Obligations of Confidentiality

- 26.4 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from

the date specified in such notice where the Service Provider fails to comply with clauses 19.1 to 19.5 (Confidentiality).

Termination on Failure to Agree Variation

26.5 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from the date specified in such notice where the Parties fail to agree to a variation pursuant to clause 32.1.2 (Variations to this Framework Agreement).

Termination on Default

26.6 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving written notice on the Service Provider with effect from the date specified in such notice where the Service Provider commits a material default and if:

- 26.6.1 the Service Provider has not remedied the material default to the reasonable satisfaction of ESPO and its Customers within thirty (30) Working Days, or such other period as may be specified by ESPO, after issue of a written notice specifying the default and requesting it to be remedied;
- 26.6.2 the material default is not, in the reasonable opinion of ESPO and its Customers, capable of remedy; or
- 26.6.3 the material default concerns the Service Provider's obligations under this Framework Agreement or any Contract in relation to the Modern Slavery Act 2015 or the Anti-slavery Policy.

Termination on Consistent Failure

26.7 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from the date specified in such notice where a Consistent Failure has occurred.

Termination on Financial Standing

26.8 ESPO may terminate this Framework Agreement and Customers may terminate Contracts by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of ESPO and its Customers), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider (the minimum level of which is specified in the ITT) which:

- 26.8.1 adversely impacts on the Service Provider's ability to supply the Goods and/or Services under this Framework Agreement; or
- 26.8.2 could reasonably be expected to have an adverse impact on the Service Provider's ability to supply the Goods and/or Services under this Framework Agreement.

Termination on Insolvency

26.9 ESPO may terminate this Framework Agreement and Customers may terminate Contracts with immediate effect by notice in writing where the Service Provider is a company and in respect of the Service Provider:

- 26.9.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 26.9.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 26.9.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- 26.9.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 26.9.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 26.9.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 26.9.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 26.9.8 any event analogous to those listed in clauses 26.9.1 to clause 26.9.7 (inclusive) occurs under the law of any other jurisdiction.

Termination on Change of Control

26.10 The Service Provider shall notify ESPO and any Customers with outstanding Contracts immediately in writing if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify ESPO and Customers immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. ESPO may terminate this Framework Agreement and Customers may terminate Contracts by giving notice in writing to the Service Provider with immediate effect within six (6) Months of:

- 26.10.1 being notified that a Change of Control has occurred; or

26.10.2 where no notification has been made, the date that ESPO and Customers become aware of the Change of Control,

if they believe, acting reasonably, that such change is likely to have an adverse effect on the provision of the Goods and/or Services, but they shall not be permitted to terminate this Framework Agreement or any Contracts where an Approval was granted prior to the Change of Control.

Termination in compliance with Public Contracts Regulations 2015

26.11 ESPO may terminate this Framework Agreement and Customers may terminate Contracts where:

- 26.11.1 the Framework Agreement or Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;
- 26.11.2 the Service Provider has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or
- 26.11.3 the Framework Agreement or Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

Framework Agreement (ESPO only NOT Customers)

Termination on Audit

26.12 ESPO may terminate this Framework Agreement by serving notice in writing with effect from the date specified in such notice in the circumstances set out in clause 17 (Records and Audit Access).

Termination by ESPO without Cause

26.13 ESPO shall have the right to terminate this Framework Agreement, or to terminate the provisions of any part of this Framework Agreement at any time following nine (9) Months after the Commencement Date by giving at least three (3) Months' written notice to the Service Provider.

Partial Termination

26.14 If ESPO is entitled to terminate this Framework Agreement pursuant to this clause 26, it may (at its sole discretion) terminate all or part of this Framework Agreement.

Termination in relation to Value for Money

26.15 ESPO may terminate this Framework Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in paragraph 2 of Framework Schedule 6 (Value for Money).

Termination for continuing Force Majeure Event

26.16 Either Party may, by written notice to the other, terminate this Framework Agreement if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) Working Days.

Termination on termination of the Mirror Framework

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

27. SUSPENSION OF SERVICE PROVIDER'S APPOINTMENT

27.1 Without prejudice to ESPO's rights to terminate this Framework Agreement as set out in clause 26 (Termination), if a right to terminate this Framework Agreement arises in accordance with clause 26 (Termination), or if ESPO reasonably believes that a Consistent Failure has occurred, ESPO may suspend the Service Provider's appointment to provide Goods and/or Services to Customers under this Framework Agreement by giving notice in writing to the Service Provider. If ESPO provides notice to the Service Provider in accordance with this clause, the Service Provider's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Service Provider by ESPO in writing from time to time.

28. CONSEQUENCES OF TERMINATION AND EXPIRY

28.1 Notwithstanding the service of a notice to terminate this Framework Agreement, the Service Provider shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this clause.

28.2 Termination or expiry of this Framework Agreement shall not cause any Contract to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of the Contract and the Service Provider shall continue to pay any Retrospective Rebate due to ESPO or any Trading Company in relation to such Contracts, notwithstanding the termination or expiry of this Framework Agreement.

28.3 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Service Provider shall return to ESPO any of ESPO's Confidential Information in the Service Provider's possession, power or control, either in its then current format or in a format nominated by ESPO, and any

other information and all copies thereof owned by ESPO, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Framework Agreement or under any Law, or such other period as is reasonably necessary for such compliance.

28.4 ESPO shall be entitled to require access to data or information arising from the provision of the Goods and/or Services by the Service Provider until the latest of:

28.4.1 the expiry of a period of twelve (12) Months following termination or expiry of this Framework Agreement; or

28.4.2 the expiry of a period of three (3) Months following the date on which the Service Provider ceases to provide Ordered Goods and/or Services under any Contract.

28.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

28.6 The provisions of clauses 3 (Scope of Framework Agreement), 6 (Formation of a Contract), 7 (Warranties, Representations and Guarantees), 9 (Prevention of Bribery and Corruption), 10 (Conflicts of Interest), 11 (Safeguard Against Fraud), 12 (Contract Performance), 15 (Provision of Management Information), 16 (ESPO's Cost Recovery/ Retrospective Rebate), 17 (Records and Audit Access), 19 (Confidentiality), 21 (Data Protection), 22 (Freedom of Information) 28 (Consequences of Termination and Expiry), 29 (Liability), 30(Insurance), 37 (Rights of Third Parties), 40 (Waiver and Cumulative Remedies) and 44 (Law and Jurisdiction), Framework Schedules 1 (The Goods and/or Services), 2 (Charging Structure), 4 (Ordering Procedure), 7 (Management Information Requirements), 9 (Commercially Sensitive Information), 10 (Framework Management Including Service Levels and Key Performance Indicators), and, without limitation to the foregoing, any other provision of this Framework Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Framework Agreement.

PART FIVE: INSURANCE AND LIABILITY

29. LIABILITY

29.1 Unlimited liability

29.1.1 Neither Party excludes or limits its liability for:

(a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;

(b) fraud or fraudulent misrepresentation by it or its employees;

(c) breach of any obligations as to title implied by Sections 12 and 13 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods & Services Act 1982; or

(d) any liability to the extent it cannot be excluded or limited by Law.

29.1.2 Notwithstanding clause 29.1, nothing shall be taken as limiting the liability of the Service Provider in respect of clauses 16 (Retrospective Rebate), 19 (Confidentiality), 21 (Data Protection), 25 (Intellectual Property Rights).

- 29.2 Subject to clause 29.1 each Party's total aggregate liability in connection with this Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to an amount not exceeding £10,000,000. For the avoidance of doubt, the Parties acknowledge and agree that this clause shall not limit either Party's liability under any Contract and that each Party's liability in relation to a Contract shall be as set out in the Contract.
- 29.3 Subject to clauses 29.1 and 29.2, the Service Provider shall indemnify and keep indemnified ESPO and any Trading Company on demand in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with any death or personal injury or loss of or damage to property, which is caused by any act or omission of the Service Provider. This clause 29.3 shall not apply to the extent that the Service Provider is able to demonstrate that such death or personal injury, or loss of or damage to property was not caused or contributed to by its negligence or default, or the negligence or default of the Service Provider's Staff or Sub-Contractors. This clause 29.3 shall be directly enforceable under the Contracts (Rights of Third Parties) Act 1999 by any Trading Company.
- 29.4 Subject to clause 29.1 in no event shall either Party be liable to the other for any:
- 29.1.1 loss of profits;
 - 29.1.2 loss of business;
 - 29.1.3 loss of revenue;
 - 29.1.4 loss of or damage to goodwill;
 - 29.1.5 loss of savings (whether anticipated or otherwise); and/or
 - 29.1.6 any indirect, special or consequential loss or damage.
- 29.5 Subject to clause 29.2 and notwithstanding clause 29.4 the Service Provider shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by ESPO) be recoverable by ESPO:

- 29.1.7 additional operational and/or administrative costs and expenses incurred by ESPO including costs relating to time spent by or on behalf of ESPO in dealing with the consequences of the Default;
- 29.1.8 cost of procuring, implementing and operating any alternative or replacement services to the Goods and/or Services;
- 29.1.9 any regulatory losses, fines, expenses or other losses arising from a breach by the Service Provider of any Laws; and
- 29.1.10 any wasted expenditure or charges.

30. INSURANCE

- 30.1 The Service Provider shall effect and maintain the following insurances in relation to the performance of its obligations under this Framework Agreement:
 - 30.1.1 Public Liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for any one occurrence or such other limit as required by Customers to be specified where relevant in an invitation to Further Competition and as required by law from time to time;
 - 30.1.2 Employers' liability insurance to cover all risks in the performance of this Framework Agreement from time to time with a minimum limit of indemnity of ten million pounds sterling (£10,000,000) for any one occurrence or such other limit as required by Customers to be specified where relevant in an invitation to Further Competition and as required by law from time to time;
 - 30.1.3 Professional Indemnity insurance to cover all risks in the performance of this Framework Agreement from time to time with a minimum limit of indemnity of two million pounds sterling (£2,000,000) for any one claim and in the aggregate or such other limit as required by Customers to be specified where relevant in an invitation to Further Competition, or if not specified such higher limit as required by law from time to time;
 - 30.1.4 Cyber Liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time with a minimum limit of two million pounds sterling (£2,000,000) for any one claim and in the aggregate or such other limit as required by Customers to be specified where relevant in an invitation to Further Competition and as required by law from time to time;
- 30.2 The insurances referred to in clause 30.1 shall be maintained with a reputable insurance company, on terms that are no less favourable to those generally available to a prudent Service Provider in respect of risks insured in the international insurance market.

- 30.3 Any excess or deductibles under the insurances referred to in clause 30.1 shall be the sole and exclusive responsibility of the Service Provider.
- 30.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this Framework Agreement.
- 30.5 The Service Provider shall produce to ESPO, on request, copies of all insurance policies referred to in this clause 30 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 30.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Framework Agreement then ESPO 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 Service Provider.

PART SIX: OTHER PROVISIONS

31. TRANSFER AND SUB-CONTRACTING

- 31.1 This Framework Agreement is personal to the Service Provider and the Service Provider shall not assign, novate or otherwise dispose of or create any trust in relation to any or all rights and obligations under this Framework Agreement or any part thereof without the prior written consent of ESPO.
- 31.2 The Service Provider shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement without the prior consent of ESPO.
- 31.3 If ESPO gives consent to the Service Provider to sub-contract assign or otherwise transfer any part of this Framework Agreement then the Service Provider shall ensure that any such sub-contract complies with the terms and conditions of this Framework Agreement.
- 31.4 Where the Service Provider enters into a Sub-Contract with a Service Provider or contractor for the purpose of performing its obligations under the Framework Agreement, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a Valid Invoice.
- 31.5 Notwithstanding any assignment or subcontracting the Service Provider shall remain liable to ESPO and/or the Customer and/or any Trading Company for the proper performance of the Service Providers obligations under this Framework Agreement and for the delivery of Goods and/or Services under this Framework Agreement, in accordance with the details set out at Framework Schedule 1 (The Goods and/or Services) and for the prompt correction of faults reasonably reported.
- 31.6 ESPO may require the Service Provider to terminate a Sub-Contract where it considers that:

31.6.1 the Sub-Contractor may prejudice the provision of the Goods and/or Services or may be acting contrary to the interests of ESPO;

31.6.2 the Sub-Contractor is considered to be unreliable and/or has not provided reasonable goods and/or services to its other customers; and/or

31.6.3 the Sub-Contractor employs unfit persons;

provided that such right shall not be exercised unreasonably, frivolously or vexatiously.

31.7 In the event that ESPO exercises its right pursuant to clause 31.6, the Service Provider shall remain responsible for maintaining the provision of the Goods and/or Services.

31.8 ESPO shall be entitled to:

31.8.1 assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any Customer; or

31.8.2 novate this Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by ESPO, provided that such assignment, novation or disposals shall not increase the burden of the Service Provider's obligations under this Framework Agreement.

31.9 The Service Provider shall enter into such agreement and/or deed as ESPO shall reasonably require so as giving effect to any assignment, novation or disposal made pursuant to clause 31.8.

32. VARIATIONS TO THIS FRAMEWORK AGREEMENT

32.1 Variation in General

32.1.1 Subject to clause 32.2 (Legislative Change) and Framework Schedule 2 (Charging Structure), this Framework Agreement may not be varied except where:

- (a) ESPO notifies the Service Provider that it wishes to vary the terms of this Framework Agreement and provides the Service Provider with full written details of any such proposed change; and
- (b) the ESPO Representative and the Service Provider Representative acting reasonably, agree to the variation and a written variation agreement is signed by the ESPO Representative and the Service Provider Representative.

32.1.2 If, by the date thirty (30) Working Days after notification was given under clause 32.1.1 (a), no agreement is reached by the Parties acting

reasonably in relation to any variation requested, ESPO may, by giving written notice to the Service Provider, either:

- (a) agree that the Parties shall continue to perform their obligations under this Framework Agreement without the variation;
- (b) agree an alternative compromise; or
- (c) terminate this Framework Agreement with immediate effect.

32.2 Legislative Change

32.2.1 The Service Provider shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is known at the Commencement Date.

32.2.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 32.2.1), the Service Provider shall notify ESPO of the likely effects of that change, including whether any change is required to the Goods and/or Services (or Ordered Goods and/or Services, as appropriate), the Framework Prices or this Framework Agreement.

32.2.3 As soon as practicable after any notification in accordance with clause 32.2.2, the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Service Provider can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Service Provider before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services (or Ordered Goods and/or Services, as appropriate);
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.

32.2.4 Any increase in the Framework Prices or relief from the Service Provider's obligations agreed by the Parties pursuant to clause 32.2.3

shall be implemented by a written variation agreement signed by the ESPO Representative and the Service Provider's Representative.

32.3 Local Government Reorganisation

32.3.1 The Parties acknowledge that during the Term of this Framework Agreement the local government structure in ESPO's and the Customer's administrative areas may be subject to change. These administrative changes may give rise to the need for ESPO to terminate this Framework Agreement and for the Customer to terminate any Contracts which it has placed with the Service Provider and/ or seek its potential variation with any successor or assignee of ESPO and the Customer. ESPO and the Customer shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.

33. NOT USED

34. COMPLAINTS HANDLING AND RESOLUTION

34.1 The Service Provider shall notify ESPO of any complaint made by Customers which is not resolved by operation of the Service Provider's usual complaints handling procedure within five (5) Working Days of becoming aware of that complaint and such notice shall contain full details of the Service Provider's plans to resolve such complaint.

34.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Framework Agreement and/or any Contract and without prejudice to any obligation of the Service Provider to take remedial action under the provisions of this Framework Agreement or a Contract, the Service Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.

34.3 Within two (2) Working Days of a request by ESPO, the Service Provider shall provide full details of a complaint to ESPO, including details of steps taken to its resolution.

35. DISPUTE RESOLUTION

35.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Framework Agreement 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 ESPO Representative and the Service Provider Representative.

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

- 35.3 The obligations of the Parties under this Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation or arbitration pursuant to this clause 35 and the Service Provider and its employees, personnel and associates shall comply fully with the requirements of this Framework Agreement at all times.
- 35.4 If the dispute cannot be resolved by the Parties pursuant to clause 35.1, the Parties shall refer it to mediation pursuant to the procedure set out in clause 35.5 unless ESPO considers that the dispute is not suitable for resolution by mediation.
- 35.5 If a dispute is referred to mediation the Parties shall comply with the following provisions:
- 35.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Mediator;
 - 35.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
 - 35.5.3 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;
 - 35.5.4 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 with effect from its signature by their duly authorised representatives;
 - 35.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Framework Agreement without the prior written consent of both Parties; and
 - 35.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

36. NOTICES

- 36.1 Any notices given under or in relation to this Framework Agreement and any Contract called off from it shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post or by the recorded delivery service, and for the attention of the relevant Party set out in clause 36.3 or to such other address as that Party may have stipulated in accordance with clause 36.5.
- 36.2 A notice shall be deemed to have been received:
- 36.2.1 if delivered personally, at the time of delivery;
 - 36.2.2 in the case of pre-paid first class post, special or other recorded delivery three Working Days from the date of posting;
 - 36.2.3 in the case of electronic communication, three Working Days after posting of a confirmation letter.
- 36.3 In proving service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing the notice was addressed to the relevant Party set out in clause 36.3 (or as otherwise 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 or other recorded delivery or pre-paid airmail letter.
- 36.4 For the purposes of clause 36.1, the address of each Party shall be:
- 36.4.1 For ESPO:
Address: Barnsdale Way, Grove Park, Enderby, Leicester LE19 1ES
For the attention of: Sheena Kocherhans
Tel: 0116 294 4011
Email: s.kocherhans@espo.org
 - 36.4.2 For the Service Provider:
Address: [address]
For the attention of: [contact name]
Tel: [telephone number]
Email: [email address]
- 36.5 Either Party may change its address for service by serving a notice in accordance with this clause.
- 36.6 For the avoidance of doubt, any notice given under this Framework Agreement shall not be validly served if sent by email and not confirmed by a letter.

37. RIGHTS OF THIRD PARTIES

37.1 Save as otherwise provided for in this Agreement a person (other than a Customer) who is not Party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

38. FORCE MAJEURE

38.1 Subject to the remaining provisions of this clause 38, either Party to this Framework Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

38.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

38.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

38.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event 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.

38.5 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Framework Agreement. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

38.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Framework Agreement. Following such notification, this Framework Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

39. SEVERABILITY

39.1 If any provision of this Framework Agreement 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 without affecting the remaining provisions of this Framework Agreement.

- 39.2 If a provision of this Framework Agreement that is fundamental to the accomplishment of the purpose of this Framework Agreement is held to any extent to be invalid, ESPO and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

40. WAIVER AND CUMULATIVE REMEDIES

- 40.1 The rights and remedies provided by this Framework Agreement may be waived only in writing by the ESPO Representative or the Service Provider Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 40.2 Unless a right or remedy of ESPO or any Trading Company is expressed to be an exclusive right or remedy, the exercise of it by ESPO or a Trading Company is without prejudice to ESPO's or a Trading Company's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 40.3 The rights and remedies provided by this Framework Agreement are cumulative and, unless otherwise provided in this Framework Agreement, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Framework Agreement.

41. RELATIONSHIP OF THE PARTIES

Nothing in this Framework Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

42. FURTHER ASSURANCES

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

43. ENTIRE AGREEMENT

- 43.1 Without prejudice to clause 7.1.4, this Framework Agreement 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.
- 43.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently

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or innocently made) other than as expressly set out in this Framework Agreement.

43.3 Nothing in this clause 43 shall operate to exclude liability for Fraud or fraudulent misrepresentation.

44. LAW AND JURISDICTION

This Framework Agreement shall be governed by and construed in accordance with the laws of England and Wales and without prejudice to the dispute resolution procedure set out in clause 35 (Dispute Resolution) each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which this Framework Agreement has been duly executed by the Parties.

Signed by.....for and on behalf of the **Service Provider**

.....

Director

Signed by for and on behalf of **ESPO**

.....

Authorised Signatory

FRAMEWORK SCHEDULE 1 – THE GOODS AND/OR SERVICES

1. INTRODUCTION

- 1.1 This Framework Schedule 1 specifies:
 - 1.1.1 The Goods and/or Services that the Service Provider shall make available to Customers;
 - 1.1.2 The Service Levels applicable to each of the Services if applicable;
 - 1.1.3 The Credits applicable where Service Levels are not met;
- 1.2 The purpose of this Framework Schedule is to provide the contractual statement of the Services, Service Levels (where applicable) and Credits (where applicable) to the Framework Agreement and therefore subject to Contract by Customers. At such time as a Customer places an order for a Service, the details of that Service in this Schedule will be specified in the ensuing Contract.
- 1.3 The contents of this Framework Schedule, together with pricing information in Schedule 2, will be made available for perusal by Customers in ESPO's catalogue post Framework Award subject to the Customers registering with a valid public body email address).
- 1.4 Throughout the term of the Framework Agreement, the Service Provider may request modifications to its offered Goods and/or Services featured in ESPO's customer user guide.
- 1.5 Any request for such a modification shall be dealt with in accordance with clause 32.1.
- 1.6 The scope and nature of any modified goods and/or services the Service Provider requests to be added to ESPO's customer user guide shall be limited to technical developments of and/or improvements to the Goods and/or Services, whether in whole or part, originally tendered by the Service Provider and detailed in the framework overview, and the inclusion of such modified goods and/or services shall not alter the overall nature of the Framework Agreement. Any request to modify goods and/or services which ESPO does not deem to be within such scope and nature shall be rejected by ESPO.
- 1.7 If the Service Provider's request is successful, from the date of agreement under clause 32.1.1:
 - 1.7.1 the modified goods and/or services shall be added to ESPO's customer user guide and made available to Customers;
 - 1.7.2 the prices for the modified goods and/or services shall be incorporated into the Framework Prices; and
 - 1.7.3 the modified goods and/or services shall form part of the Goods and/or Services for the purposes of this Framework Agreement.

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Upon completion of the tender evaluation exercise and prior to the commencement of the Framework Agreement, ESPO will incorporate the Specification/Service Level Agreement document (contained within Section B of the tender submission ITT document) and the Service Provider's response to the Statement of Requirements (also contained within Section B of the ITT document).

ANNEX 1 OF FRAMEWORK SCHEDULE 1 - THE SERVICES

[TO BE INSERTED]

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ANNEX 2 TO FRAMEWORK SCHEDULE 1 – SERVICE PROVIDER’S RESPONSE TO THE SPECIFICATION

[TO BE INSERTED]

ANNEX 3 TO FRAMEWORK SCHEDULE 1- SERVICE PROVIDER'S AWARDED LOTS

[TO BE INSERTED]

FRAMEWORK SCHEDULE 2 - CHARGING STRUCTURE

1. GENERAL PROVISIONS

- 1.1 The Framework Prices set out in this Framework Schedule as amended by any variation agreed pursuant to the provisions in this Framework Schedule are the maximum that the Service Provider may charge pursuant to any Contract under the Framework Agreement.
- 1.2 The Service Provider acknowledges and agrees that any Charges submitted in relation to a further competition 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 (all things being equal).
- 1.3 The Service Provider acknowledges that the Framework Prices may be reviewed and adjusted if necessary from time to time in accordance with Framework Schedule 6 (Value for Money).

The Retrospective Rebate:

- 1.4 All prices submitted must include the Retrospective Rebate, which is currently set at 1%
- 1.5 The Retrospective Rebate will be paid by the Service Provider to ESPO or, as appropriate, any Trading Company in accordance with Framework clause 16.2.

2. ADJUSTMENT OF THE FRAMEWORK PRICES

- 2.1 The Framework Prices shall only be varied:
 - 2.1.1 due to a Specific Change in law in relation to which the Parties agrees that a change is required to all or part of the Framework Prices in accordance with clause 31.2 of the Framework Agreement;
 - 2.1.2 where the Parties agree a reduction in all or part of the Framework Prices in accordance with Paragraph 4.2 below; or
 - 2.1.3 where a review of the Framework Prices is requested and agreed by the Parties, in accordance with the provisions of paragraph 3 of this Framework Schedule.
- 2.2 Every 6 Months during the Term, the Service Provider shall assess the level of the Framework Prices to consider whether it is able to reduce them. Such assessments shall be carried out on 1 October and 1 April in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Service Provider is able to decrease all or part of the Framework Prices it shall promptly notify ESPO in writing and such reduction shall be implemented in accordance with Paragraph 4 below.

3. REVIEW OF THE FRAMEWORK PRICES

- 3.1 Subject to Paragraphs 2.1.1 and 2.1.2, the Framework Prices shall not be increased for 24 months from the Commencement Date.
- 3.2 The Service Provider may request a variation in the Framework Prices in accordance with the remaining provisions of this Paragraph 4 subject always to:
 - 3.2.1 the request being submitted at least three months before the Adjustment Date; and
 - 3.2.2 the agreement of the Director of ESPO.
- 3.3 The earliest Adjustment Date for any increase in the Framework Prices in accordance with this Paragraph shall be the first Working Day following the second anniversary of the Commencement Date. Thereafter any subsequent increase to any of the Framework Prices in accordance with this Paragraph shall not occur before the anniversary of the previous Adjustment Date.
- 3.4 To make a request for a variation of some or all of the Framework Prices in accordance with this Paragraph, the Service Provider shall provide ESPO with:
 - 3.4.1 a list of the Framework Prices it wishes to review;
 - 3.4.2 for each of the Framework Prices under review, written evidence of the justification for the requested increase including:
 - (a) a breakdown of the profit and cost components that comprise the relevant Framework Price;
 - (b) details of the movement in the different identified cost components of the relevant Framework Price;
 - (c) reasons for the movement in the different identified cost components of the relevant Framework Price;
 - (d) evidence that the Service Provider has attempted to mitigate against the increase in the relevant cost components; and
 - (e) evidence that the Service Provider's profit component of the proposed Framework Price is no greater than that which applied to the preceding Framework Prices at the Commencement Date.

3.5 INDEXATION

- 3.5.1 the relevant adjustment shall:
 - (a) be applied on the effective date of the increase in the relevant Framework Prices by way of Indexation ("**Indexation Adjustment Date**") which shall be subject to paragraph 3.5.2;
 - (b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve

- (12) Months ended on the 30th of April immediately preceding the relevant Indexation Adjustment Date;
- (c) The CPI index used will be taken from the latest ONS Consumer Price Index release "<https://www.ons.gov.uk/economy/inflationandpriceindices>"
 - (d) where the published CPI Index figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless ESPO and the Service Provider shall agree otherwise;
 - (e) if the CPI Index is no longer published, ESPO and the Service Provider shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Framework Schedule 3.
- 3.5.2 The earliest Indexation Adjustment Date will be the first Working Day following the second anniversary of the Commencement Date. Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Term;
- 3.5.3 Except as set out in this paragraph 3.5, neither the Framework Prices nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Service Provider or Sub-Contractors of the performance of their obligations under this Framework Agreement and any Contracts.

4. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

- 4.1 Variations in accordance with the provisions of this Framework Schedule to the Framework Prices shall be made by ESPO to take effect:
- 4.1.1 on the Adjustment Date where an adjustment is made in accordance with paragraph 2.1.3; or
 - 4.1.2 in accordance with clause 32.2 of the Framework Agreement where an adjustment is made in accordance with paragraph 2.1.1; or
 - 4.1.3 where the Service Provider notifies ESPO in accordance with Paragraph 2.2 (as applicable) that it is able to decrease the Framework Prices, one month after the date of notification,
- and the Service Provider shall amend the Framework Prices shown in this Framework Schedule 2 to reflect such variations.
- 4.2 For the avoidance of doubt any change to the Framework Prices implemented pursuant to this Framework Schedule are made independently of, and shall not affect the Charges payable by a Customer under a Contract in force at the time a change to the Framework Prices is implemented unless agreed by the Customer.
- 4.3 Any variation to the Charges payable under a Contract must be agreed between the Service Provider and the relevant Customer and implemented in accordance with the provisions applicable to the Contract.

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ANNEX TO FRAMEWORK SCHEDULE 2 – FRAMEWORK PRICES

The prices that the awarded Service Provider has submitted as part of its tender will form this Annex

Buyers must insert in this Annex all of the pricing information/tendered pricing that the awarded Service Provider submitted as part of its tender.

FRAMEWORK SCHEDULE 3 – FORM OF CONTRACT AND CALL-OFF TERMS

FORM OF CONTRACT

This contract is made on theday of.....

BETWEEN

(1) [insert the Customer’s name] of [insert customer’s address] (the “Customer”); and

If the Service Provider 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 Service Provider’s name] whose registered office is [insert the Service Provider’s registered office address] whose company number is ([insert the Service Provider’s company number if a private limited company]) (the “Service Provider”)

WHEREAS the Customer wishes to have provided the following goods and/or services namely [insert a description of the goods and/or services to be provided] pursuant to the ESPO Framework Agreement (reference [insert framework reference number]).

NOW IT IS AGREED THAT

1. The Service Provider will provide the goods and/or services in accordance with the terms of the call-off contract (reference number [insert call-off terms reference number]) and Contract Documents.
2. The Customer will pay the Service Provider 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 documents as listed delete whichever is not applicable [below] [in the Contract Document Schedule reference [insert reference number]]

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IN WITNESS OF the hands of the Parties or their duly authorised representatives:

CUSTOMER DRAFTING NOTE: 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 [], an authorised officer

)

)

Authorised Officer

Print name:

Signed by

[INSERT NAME OF SERVICE PROVIDER]

)

)

)

Service Provider

Print name:

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CUSTOMER DRAFTING NOTE: 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

EXECUTED AS A DEED BY THE SERVICE PROVIDER

by affixing the common seal of

[INSERT NAME OF SERVICE PROVIDER]

in the presence of: -

.....

Director

.....

[Director OR Secretary]

OR

EXECUTED AS A DEED BY

[INSERT SERVICE PROVIDER'S NAME] acting by

[INSERT NAME OF FIRST DIRECTOR], a director and

[INSERT NAME OF SECOND DIRECTOR/SECRETARY],

[a director OR its secretary]

.....

Director

.....

[Director OR Secretary]

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

(Document Reference 664-21)

MASTER CONTRACT SCHEDULE

(ESPO Framework Reference 664-21 Consultancy Services)

1. TERM
Commencement Date [20] CUSTOMER DRAFTING NOTE: Insert the date on which the agreement for the supply of the Goods and/or Services is to commence.
Expiry Date [20] CUSTOMER DRAFTING NOTE: Insert the date on which the Initial Term of the Contract is to expire.
Extension Period [] CUSTOMER DRAFTING NOTE: Insert details of the extension period (e.g. 12 months, 24 months).
2. GOODS AND/OR SERVICES REQUIREMENTS
Goods required []
Services and Deliverables required []
Optional Services required CUSTOMER DRAFTING NOTE: Include a description of the Services together with any Deliverables 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 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

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<p>[]</p> <p>CUSTOMER DRAFTING NOTE: 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.</p>
<p>Standards</p> <p>Quality Standards</p> <p>[]</p> <p>Technical Standards</p> <p>[]</p> <p>CUSTOMER DRAFTING NOTE: 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.</p>
<p>Disaster Recovery and Business Continuity</p> <p>[]</p> <p>CUSTOMER DRAFTING NOTE: 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.</p>
<p>3. SERVICE PROVIDER SOLUTION</p>
<p>Service Provider Solution</p> <p>[]</p> <p>CUSTOMER DRAFTING NOTE: Insert details of the Service Provider's response. If this is not described here then it needs to be include in another Contract Document listed in the Form of Contract</p>

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

[]

CUSTOMER DRAFTING NOTE: Insert details of the Service Provider's project or account manager and any other key members of the Service Provider's team.

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

[]

CUSTOMER DRAFTING NOTE: 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 Service Provider in respect of any aspects of the Premises or Infrastructure being unsuitable for the 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)

CUSTOMER DRAFTING NOTE: 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 payments should be linked to the delivery of certain Milestones. If so, this will need to be tied into clause 11 (Payment).

A draft template Implementation Plan as at the Commencement Date is set out below:

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

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Critical Service Failure

- (i) In relation to the required [insert description/name of Goods] a Critical Service Failure shall include a delay in servicing the demand for [insert the number of Goods named ordered] ordered by the Customer in excess of 24 hours more than once in any three (3) Month period or more than three times in any rolling twelve (12) month period.

CUSTOMER DRAFTING NOTE: 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 during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) for more than 24 hours accumulated in three (3) Month period, or 48 hours in any rolling 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.

CUSTOMER DRAFTING NOTE: 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

[]

CUSTOMER DRAFTING NOTE: Include details of how you intend to monitor the Service Provider'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]

[]

CUSTOMER DRAFTING NOTE: Describe the Management Information required by you and the basis agreed by the Service Provider in terms of production.

5. CUSTOMER RESPONSIBILITIES

Customer's Responsibilities (where appropriate)

[]

CUSTOMER DRAFTING NOTE: 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 Service Provider 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)

[]

CUSTOMER DRAFTING NOTE: 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)

[]

CUSTOMER DRAFTING NOTE: 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:

CUSTOMER DRAFTING NOTE: Include details of any Commercially Sensitive Information identified by the Service Provider and the duration it should be confidential for. This will assist the Customer in respect of compliance with Freedom of Information Act (FOIA) and the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004).

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.

8. AGREED AMENDMENTS TO THE CALL-OFF TERMS

The following amendments shall be deemed to be made to the Call-Off Terms:

[]

CUSTOMER DRAFTING NOTE: Amendments should only be included where a further competition has been conducted under the Framework Agreement and the amendments have been communicated and agreed by the Service Provider. List details any amendments to the Call-Off Terms that have been agreed between you and the Service Provider.

For example:

1. Replace clause x.x with the following wording.....

9. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. INTRODUCTION

- 1.1 The Service Provider shall comply with any further written instructions with respect to processing by the Customer.
- 1.2 Any such further instructions shall be incorporated into this section 9 of the Master Contract Schedule.

CUSTOMER DRAFTING NOTE: If the customer wishes the service provider 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.

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	Be as specific as possible, but make sure that you cover all intended purposes. 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

	<p>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	<p>Examples here include; name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.</p>
Categories of Data Subject	<p>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.</p>
Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data.	<p>Describe how long the data will be retained for, how it will be returned or destroyed.</p>

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 16.8.15 of this Contract.

1. The [Parties] [Customer] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] 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] [Service Provider] shall be the point of contact for Data Subjects.

THE CUSTOMER

- and -

THE SERVICE PROVIDER

CALL-OFF TERMS

relating to

CONSULTANCY SERVICES

CONTRACT REF

ESPO 664-21

CUSTOMER DRAFTING 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, the Parties should ensure that they have read the guidance notes, taken any actions necessary and then deleted 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

BETWEEN

- (1) The customer identified in the Form of Contract (the "Customer"); and
- (2) The company identified in the Form of Contract (the "Service Provider").

WHEREAS

- (A) ESPO selected framework providers, including the Service Provider, to provide Goods and/or Services;
- (B) the Service Provider undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 664-21 dated [REDACTED] (the "Framework Agreement");
- (C) ESPO and the Service Provider have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Service Provider for the Service Provider to supply Goods and/or Services;
- (D) The Customer enters into this Contract on the terms hereinafter appearing.

1. GENERAL PROVISIONS

1.1 Definitions

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

"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in the Master Contract Schedule and/or any other Contract Document;
"Call-off Terms"	means these terms and conditions in respect of the provision of the Goods and/or Services, together with the schedules hereto;

"Change in Law"	means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-off Terms which comes into force after the Commencement Date;
"Commencement Date"	means the date set out in the Master Contract Schedule and/or the Form of Contract Document;
"Commercially Sensitive Information"	means the confidential information listed in set out at Schedule 9 of the Framework Agreement (if any) the Master Contract Schedule and/or a Contract Document comprising of commercially sensitive information relating to the Service Provider, its IPR or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Service Provider's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of the Services and/or reducing the charges produced by the Service Provider pursuant to schedule 6 of the Framework Agreement;
"Contract"	means the contract entered into by the Customer and the Service Provider pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement comprising of the Form of Contract Document, these Call-Off Terms, the schedules hereto, the Master Contract Schedule and any other Contract Document;
"Contract Document"	means all documents listed in the Form of Contract Document and/or within a schedule referred to in the Form of Contract Document;
"Contract Period"	means the period from the Commencement Date to: a) the Expiry Date; or b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in the Master Contract Schedule and/or any other Contract Document, for the full and proper performance by the Service Provider of its obligations under the Contract less any Service Credits;

- "Contracting Authority"** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer;
- "Control"** means control as defined in section 1124 Corporation Tax Act 2010 and "**Controls**" and "**Controlled**" shall be interpreted accordingly;
- "Controller"** shall take the meaning given in the GDPR;
- "Conviction"** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
- "Critical Service Failure"** shall have the meaning given in the Master Contract Schedule and/or any other Contract Document;
- "Customer Data"** means:
- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
 - (i) are supplied to the Service Provider by or on behalf of the Customer; or
 - (ii) the Service Provider is required to generate, process, store or transmit pursuant to the Contract; or
 - (b) any Personal Data for which the Customer is the Data Controller;
- "Customer Pre-Existing IPR"** shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Service Provider of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Customer's Premises"	the premises identified in the Master Contract Schedule and/or any other Contract Document and which are to be made available for use by the Service Provider for the provision of the Goods and/or Services on the terms set out in the Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Master Contract Schedule and/or any other Contract Document;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to the Contract;
"Customer's Confidential Information"	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Service Providers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Legislation"	means the General Data Protection Regulation ((EU) 2016/679) (GDPR), the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK including the Data Protection Act 2018 and all applicable law about the processing of personal data and privacy;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	shall take the meaning given in the GDPR;
"Data Subject"	shall take the meaning given in the GDPR;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default"	means any breach of the obligations of the Service Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Service Provider or Service Provider's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Service Provider is liable to the Customer;
"Delay Payments"	means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule and/or any other Contract Document;
"Deliverables"	means those deliverables listed in the Master Contract Schedule and/or any other Contract Document (if any);
"Delivery"	means the time at which the Goods and/or Services have been installed by the Service Provider and the Customer has issued the Service Provider with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 42.2;
"DPA 2018"	means Data Protection Act 2018;
"Employment Checks"	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equality Legislation"	means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;

- "Equipment"** means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods 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;
- "Expiry Date"** means the date set out in the Master Contract Schedule and/or any other Contract Document;
- "Form of Contract"** means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Service Provider and which lists all of the Contract Documents;
- "FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure"

means any event, occurrence or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- 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, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- 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 to the Service Provider, the Service Provider's Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and
 - ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

"GDPR"

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

"Good Industry Practice"

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

"Goods and/or Services"

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

choose from the two options below or if the options are not appropriate discuss with the Commercial Solicitor

- "Guarantee 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 Service Provider's Tender];
- "Holding Company"** shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
- "Implementation Plan"** means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated 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:
- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;
 - b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
 - c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
- means the response submitted by the Service Provider to the Invitation to Tender issued by the Customer on [insert date];
- ITT Response**
- "Key Personnel"** means the individuals (if any) identified in the Master Contract Schedule and/or any other Contract Document;

"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Service Provider's or the Customer's possession before the Commencement Date;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply;
"LED"	means Law Enforcement Directive (Directive (EU) 2016/680);
"Management Information"	means the management information specified in Framework Schedule 7 (Management Information Requirements);
"Master Contract Schedule"	means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement;
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Mirror Framework"	means any framework agreement entered into by the Service Provider and a company owned by ESPO;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Normal Business Hours"	means 8.00 am to 6.00 pm local UK time, each Working Day;
"Parent Company"	means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider;
"Party"	means the Service Provider or the Customer and "Parties" shall mean both of them;
"Personal Data"	shall take the meaning given in the GDPR;
"Personal Data Breach"	shall take the meaning given in the GDPR;

- "Premises"** means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document;
- "Processor"** shall take the meaning given in the GDPR;
- "Prohibited Act"** Means:
- a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity; or
 - b) committing any offence:
 - i) under the Bribery Act 2010;
 - ii) under legislation creating offences concerning fraudulent acts;
 - iii) at common law concerning fraudulent acts relating to the Contract or any other contract with ESPO and/or Customer and/or any other contracting body; or
 - iv) involving slavery or human trafficking; or
 - c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer or any other contracting body.
- "Project Specific IPRs"** means:
- (a) IPRs in the Services, Deliverables and/or Goods provided by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or
 - (b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Service Provider (or by a third party on behalf of the Service Provider) under the Contract,
- "Property"** means the property, other than real property and IPR, issued or made available to the Service Provider by the Customer in connection with the Contract;

"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
"Public Contracts Directive"	means Directive 2014/24/EU of the European Parliament and of the Council;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance;
"Regulated Activity"	means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;
"Related Service Provider"	means any person who provides services to the Customer which are related to the Services from time to time;
"Replacement Service Provider"	any third party Service Provider of Replacement Services appointed by the Customer from time to time;
"Replacement Service"	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Customer internally and/or by any third party;

"Request for Information"	means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Service Credits"	means the sums referred to or sums calculated in accordance with Schedule 1 being payable by the Service Provider in respect of any failure by the Service Provider to meet one or more Service Levels;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to Schedule 1;
"Service Provider"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;
"Service Provider Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
"Service Provider Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Service Provider's Representative"	means the representative appointed by the Service Provider from time to time in relation to the Contract;
"Service Provider Solution"	means the Service Provider's solution for the provision of the Goods and/or Services as referred to in the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;
"Service Provider's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Services"	means the services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents;

"Sites"	means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services;
"Specification"	means the specification in the Lots at Framework Schedule 1 (Goods and/or Services);
"Staff"	means all persons employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Contract;
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or any part thereof;
"Sub-Contractor"	means the third party with whom the Service Provider enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Sub-processor"	means any third party appointed to process Personal Data on behalf of the Service Provider related to this Contract;
"Technical Standards"	means the technical standards set out in the Framework Agreement and if applicable the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;
"Tender"	means the tender submitted by the Service Provider to the Customer in response to the Customer's invitation to Service Providers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;
"Term"	the period of the Initial Term as may be varied by: (a) any extensions to this Contract which are agreed pursuant to clause 3; or (b) the earlier termination of this Contract in accordance with its terms;
"TFEU"	means the Treaty on the Functioning of the European Union (OJ No. C 115);

"Transferring Goods"	means goods comprised in the Goods and/or Services, title to which transfers between the Parties in accordance with clause 4.6.1;
"Treaties"	means the Treaty of the European Union (OJ No. C 115) and TFEU;
"Undelivered Goods and/or Services "	shall have the meaning given in clause 4.5.7;
"Valid Invoice"	means an invoice issued by the Service Provider to the Customer that complies with clause 11.2.2;
"Variation"	has the meaning given to it in clause 33;
"Variation Procedure"	means the procedure set out in clause 33;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

1.2 Interpretation

The interpretation and construction of the 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 the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;
- 1.2.6 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 the Contract for ease of reference only and shall not affect the interpretation or construction of the 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 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 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 the 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 these Call-Off Terms;
 - 1.2.11.3 the Master Contract Schedule; and
 - 1.2.11.4 any other Contract Document or document referred to in these Call-Off Terms.

2. DUE DILIGENCE

- 2.1 The Service Provider acknowledges that it:
 - 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
 - 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
 - 2.1.3 has entered into this Contract in reliance on its own due diligence alone.
- 2.2 The Customer hereby confirms that it has all requisite authority to enter into the Contract.

3. CONTRACT PERIOD

- 3.1 This Contract shall take effect on the Commencement Date and shall continue for the Term.
- 3.2 The Customer may extend this Contract beyond the Initial Term by a further period or periods as stated in the Master Contract Schedule (Extension Period). If the Customer wishes to extend this Contract, it shall give the Service Provider three (3) months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.3 If the Customer gives such notice then the Term shall be extended by the period set out in the notice.
- 3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 20 shall apply.

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

- 4.1.1 The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan.
- 4.1.2 The Service Provider shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Service Provider supplies the Goods and/or Services at the Premises during Normal Business Hours on reasonable notice.
- 4.1.3 If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Goods and/or Services does not meet the requirements of the Contract or differs in any way from those requirements, the Service Provider shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 4.1.4 The Service Provider accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:
 - 4.1.4.1 the same is notified in writing to the Service Provider within three (3) Working Days of receipt of the Ordered Goods by the Customer; and
 - 4.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Service Provider's instructions.

- 4.1.5 Where the Service Provider accepts responsibility under clause 4.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Service Provider's reasonable satisfaction, to have been lost or damaged in transit.
- 4.1.6 The Service Provider agrees that the Customer relies on the skill and judgment of the Service Provider in the supply of the Goods and/or Services and the performance of its obligations under the Contract.

4.2 Provision and Removal of Equipment

- 4.2.1 Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Service Provider shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 4.2.2 The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 4.2.3 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Service Provider shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Service Provider's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Service Provider.
- 4.2.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5 The Service Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 4.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - 4.2.5.2 replace such item with a suitable substitute item of Equipment.
- 4.2.6 Upon termination or expiry of the Contract, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or Service Provider's Staff.

4.3 Quality

- 4.3.1 The Service Provider shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and/or Services must be provided has not been specified in the Contract, the Service Provider shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the supply of the Goods and/or Services commencing and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 4.3.2 The Service Provider shall ensure that the Staff shall at all times during the Contract Period:
- 4.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and/or Services;
 - 4.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and
 - 4.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 4.3.3 The Service Provider shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.
- 4.3.4 The Service Provider shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the Specification in the Framework Agreement (if any) (as a minimum), the Master Contract Schedule and/or any other Contract Document and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.
- 4.3.5 The Service Provider shall at all times during the Contract Period ensure that:
- 4.3.5.1 the Goods and/or Services conform in all respects with the specifications set out in the Master Contract Schedule and/or any other Contract Document and/or where applicable the Framework Agreement;
 - 4.3.5.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Master Contract Schedule and/or any other Contract Document;

- 4.3.5.3 the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
- 4.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Service Provider by the Customer; and
- 4.3.5.5 the Goods and/or Services are supplied in accordance with the Service Provider Solution.

4.4 Delivery (Goods only)

- 4.4.1 Without prejudice to the content of clause 4.5 (Delivery) the Service Provider shall make delivery of the Goods specified in the Master Contract Schedule and/or any other Contract Document at the times and in the manner stated therein and as a minimum meet the requirements stated in the Response to the ITT. Delivery shall be at no cost to the Customer and shall be at the sole risk of the Service Provider.
- 4.4.1 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 an order.
- 4.4.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

4.5 Delivery

- 4.5.1 The Service Provider shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.
- 4.5.2 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.
- 4.5.3 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Service Provider fails to deliver the Goods and/or Services within the time specified in accordance with clause 4.1.1 and/or the Master Contract Schedule and/or any other Contract Document and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 4.5.4 Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-Contractors

at such place or places as set out in the Master Contract Schedule and/or any other Contract Document.

- 4.5.5 Where the Goods are delivered by the Service Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 4.5.6 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods and/or Services by the Staff or the Service Provider's Service Providers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 4.5.7 In the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Goods and/or Services**") then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and/or Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and/or Services are Delivered.
- 4.5.8 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in the Master Contract Schedule and/or any other Contract Document. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Service Provider to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Service Provider for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Service Provider.

4.6 **Ownership and Risk**

- 4.6.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to an order.
- 4.6.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

4.7 **Guarantee**

The Service Provider hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days

thereafter give notice in writing to the Service Provider of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

5. ASSISTANCE ON EXPIRY OR TERMINATION

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

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

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

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

7. MONITORING OF CONTRACT PERFORMANCE

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

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

8. DISRUPTION

8.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

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

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

- 8.4 If the Service Provider's proposals referred to in clause 8.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.5 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

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

CUSTOMER DRAFTING NOTE: 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 give rise to service credits is that the Service Provider'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 Service Provider shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits 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 the Contract with immediate effect upon giving written notice to the Service Provider.
- 9.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 9.3 Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or Services are not supplied in accordance with, or the Service Provider fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
- 9.3.1 at the Customer's option, give the Service Provider the opportunity at the Service Provider's expense to either remedy any defect in the Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;

- 9.3.2 reject the Goods (in whole or in part) and require the Service Provider to remove the Goods (in whole or in part) at the risk and cost of the Service Provider on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Service Provider;
 - 9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;
 - 9.3.4 if the Master Contract Schedule and/or any other Contract Documents provide for the payment of Delay Payments, then the Service Provider shall pay such amounts (calculated in accordance with the Master Contract Schedule and/or any other Contract Document) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is met;
 - 9.3.5 carry out at the Service Provider's expense any work necessary to make the Goods and/or Services comply with the Contract;
 - 9.3.6 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;
 - 9.3.7 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services; and/or
 - 9.3.8 charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.
- 9.4 **In the event that the Service Provider:**
- 9.4.1 fails to comply with clause 9.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
 - 9.4.2 persistently fails to comply with clause 9.3 above,

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

10. [PREMISES]

CUSTOMER DRAFTING NOTE: Delete this clause if there is no requirement for the Service Provider to be present on the Customer's site – other than to make deliveries.

10.1 Inspection of Premises

10.1.1 The Service Provider 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 of those actions, have been specified in the Master Contract Schedule and/or any other Contract Document.

10.1.2 If the Service Provider has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with clause 10.1.1 then the Service Provider 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. The onus shall be on the Service Provider to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Service Provider 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 Service Provider by the Customer in connection with the Contract shall be made available to the Service Provider on a non-exclusive licence basis free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under the Contract. The Service Provider shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.

10.2.2 The Service Provider shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider 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 Service Provider in accordance with clause 10.1.1 and the Master Contract Schedule and/or any other Contract Document (if any), should the Service Provider require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Service Provider's expense. The Customer shall undertake any modification work which it approves pursuant to this clause 10.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.

10.2.4 The Service Provider 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 Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation 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 Service Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the 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 Service Provider such Property shall be and remain the property of the Customer and the Service Provider irrevocably licences the Customer and its agents to enter upon any premises of the Service Provider during Normal Business Hours on reasonable notice to recover any such Property. The Service Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Service Provider shall possess the Property as fiduciary agent and bailee of the Customer. The Service Provider 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 Service Provider unless the Service Provider notifies the Customer otherwise within five (5) Working Days of receipt.

- 10.3.3** The Service Provider shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 10.3.4** The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).
- 11.1.2** The Customer shall, in addition to the Contract Charges and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 11.1.3** If at any time during the Contract Period the Service Provider reduces its rates of Charges for any Goods and/or Services which is provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Service Provider shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.
- 11.1.4** The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement which is specifically commissioned from the Service Provider by another contracting body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and/or Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.
- 11.1.5** The Parties acknowledge that the Service Provider is required to pay to ESPO and, where relevant, the Trading Company a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

11.2 Payment and VAT

- 11.2.1 Where the Service Provider submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.
- 11.2.2 The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice. The Customer shall accept and process for payment an electronic invoice submitted for payment by the Service Provider where the invoice is undisputed and where it complies with the following standard on electronic invoicing: the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 11.2.3 The Customer shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 11.2.4 Where the Customer fails to comply with clause 11.2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.2.2 after a reasonable time has passed.
- 11.2.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 11.2.1 – 11.2.3 of this Contract; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 11.1.1 – 11.1.4 of this 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 subcontracting 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 Service Provider shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause 11.2.6 shall be paid by the Service Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

- 11.2.7 The Service Provider shall not suspend the supply of the Services and/or Goods (as applicable) unless the Service Provider is entitled to terminate the Contract under clause 26 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

11.3 Recovery of Sums Due

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

11.4 Euro

- 11.4.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Service Provider free of charge to the Customer.
- 11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Service Provider.

12. KEY PERSONNEL

- 12.1 The Parties have agreed to the appointment of the Key Personnel. The Service Provider 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 Service Provider 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 or appointment of a replacement for any relevant Key Personnel by the Service Provider or Sub-Contractor.
- 12.4 The Service Provider 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 Service Provider 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 also require the Service Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

13. SERVICE PROVIDER'S STAFF

- 13.1 The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
 - 13.1.1 any member of the Staff; or
 - 13.1.2 any person employed or engaged by any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 13.2 At the Customer's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 13.3 Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 13.4 If the Service Provider fails to comply with clause 13.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 13.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider and Staff have failed to comply with clause 13.2 shall be final and conclusive.

Children and Vulnerable Adults

- 13.6 Where the provision of the Goods and/or Services requires any of the Service Provider's employees or volunteers to work in a Regulated Activity with children

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

- 13.7 The Service Provider will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.
- 13.8 The Service Provider will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.
- 13.9 The Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups 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.
- 13.10 Where the provision of the Goods and/or Services does not require any of the Service Provider's employees or volunteers to work in a Regulated Activity but where the Service Provider's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider will in respect of such employees and volunteers:
 - a) carry out Employment Checks; and
 - b) carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Contract Period.
- 13.11 Where the principle obligation of the Service Provider is to effect delivery of goods to a site and does not require any element of on-site working including installation and commissioning of Goods in a private dwelling, neither the Service Provider nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Service Provider shall ensure that those engaged in undertaking the duties under this contract, including employees, servants, agents and others are of suitable standing and good character and provide them with copies of the Specification and secure their written acknowledgement of receipt and understanding.

CUSTOMER DRAFTING NOTE: 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

- 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 in the Services immediately before the Commencement Date (“the Transferring Employees”) shall take effect as if originally made between the Service Provider and the employees (save for those who object pursuant to Regulation 4(7) of TUPE.

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

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

- (a) the total number of the Service Provider’s Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and
- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pension entitlements of the Service Provider’s Staff referred to in clause 14.3(a); and
- (c) the terms and conditions of the employment/engagement of the Service Provider’s Staff referred to in clause 14.3(a), their job titles and qualifications; and
- (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- (e) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

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

14.5 At the time of providing the disclosed information pursuant to clauses 14.3 and 14.4, the Service Provider shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Service Provider.

14.6 The Customer may use the information it receives from the Service Provider pursuant to clauses 14.3 and 14.4 for the purposes of TUPE and/or any

retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Service Provider shall provide the Replacement Service Provider with such assistance as it shall reasonably request.

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

- (a) the provision of information pursuant to clause 14; and
- (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Service Provider or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period; and
- (c) any failure by the Service Provider or any Sub-Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Service Provider to comply with its duties under Regulation 13 of the Regulations; and
- (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Service Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
- (e) any claim by any person who is transferred by the Service Provider to the Customer and/or a Replacement Service Provider whose name is not included in the list of Returning Employees.

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

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

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

- (a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any of the Staff (other than where such amendment or variation has previously been agreed between the Service Provider and the

Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

- (b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);
- (c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Service Provider, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.]

15. STAFFING SECURITY

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

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 16.2 The Service Provider shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 16.3 With respect to the Service Providers obligations under the Contract, the Service Provider warrants and represents that:
 - 16.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;
 - 16.3.2 it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation

of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by the Customer;

- 16.4 The Service Provider shall during and after the Contract Period of the Contract indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 16.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
 - 16.4.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 16.5 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.
- 16.6 If a claim or demand is made or action brought to which clause 16.3 and/or 16.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
- 16.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services; or
 - 16.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and
 - 16.6.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 16.7 Customer Data**
- 16.7.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

- 16.7.2 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise expressly Approved by the Customer.
- 16.7.3 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 16.7.4 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 16.7.5 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.
- 16.7.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer may:
- 16.7.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 16.7.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.
- 16.7.7 If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.

16.8 Protection of Personal Data

- 16.8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, 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 Service Provider to perform, the Customer is the Controller and the Service Provider is the

Processor. The only processing that the Service Provider is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be determined by the Service Provider.

- 16.8.2 The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 16.8.3 The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 16.8.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 16.8.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Goods and/or Services;
 - 16.8.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 16.8.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 16.8.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 16.8.4.1 process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 16.8.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 16.8.4.3 ensure that:

- (v) the Service Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular section 9 of the Master Contract Schedule);
- (vi) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel (including any sub-processors or third-party processors) who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Service Provider's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

- (i) (the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
- (iv) the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and

16.8.4.5 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 Service Provider is required by Law to retain the Personal Data.

- 16.8.5 Subject to clause 16.8.6, the Service Provider shall notify the Customer immediately if it:
- 16.8.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 16.8.5.2 receives a request to rectify, block or erase any Personal Data;
 - 16.8.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 16.8.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 16.8.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 16.8.5.6 becomes aware of a Data Loss Event.
- 16.8.6 The Service Provider's obligation to notify under clause 16.8.5 shall include the provision of further information to the Customer in phases, as details become available.
- 16.8.7 Taking into account the nature of all processing, the Service Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 16.8.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 16.8.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 16.8.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 16.8.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 16.8.7.4 assistance as requested by the Customer following any Data Loss Event;
 - 16.8.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any

consultation by the Customer with the Information Commissioner's Office.

- 16.8.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
- 16.8.8.1 the Customer determines that the processing is not occasional;
 - 16.8.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 16.8.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 16.8.9 The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 16.8.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.
- 16.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
- 16.8.11.1 notify the Customer in writing of the intended Sub-processor and processing;
 - 16.8.11.2 obtain the written consent of the Customer;
 - 16.8.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16.8 such that they apply to the Sub-processor; and
 - 16.8.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 16.8.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 16.8.13 The 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 (which shall apply when incorporated by attachment to this Contract).
- 16.8.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Service Provider amend this

Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Customer Drafting Note: Clause 16.8.15 (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

16.8.15 Notwithstanding clause 16.8.1 the Parties acknowledge that they are also Joint Controllers for the purpose of the Data Protection Legislation in respect of: **[Customer Drafting Note: 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 16.8.1 – 16.8.4 will not apply and the Parties agree to comply with the requirements as detailed in Section 10 of the Master Contract Schedule.]

16.9 Security of Premises

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

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

16.10 Confidentiality

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

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

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

16.10.2 Clause 16.10.1 shall not apply to the extent that:

16.10.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 19.11 (Freedom of Information);

- 16.10.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.10.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.10.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 16.10.2.5 it is independently developed without access to the other Party's Confidential Information.
- 16.10.3 The Service Provider may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.10.4 The Service Provider shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 16.10.5 At the written request of the Customer, the Service Provider shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 16.10.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Service Provider is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 16.10.7 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider's Confidential Information (including the Management Information obtained under clause 7.2):
- 16.10.7.1 to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to

further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;

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

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

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

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

16.10.9 Nothing in this clause 16.10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

16.10.10 In the event that the Service Provider fails to comply with clause 16.10.1 to clause 16.10.6, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.

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

16.11 Freedom of Information

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

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

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

- 16.11.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- 16.11.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 16.11.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 16.11.4 In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 16.11.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 16.10) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and/or Services:
 - 16.11.5.1 in certain circumstances without consulting the Service Provider; or
 - 16.11.5.2 following consultation with the Service Provider and having taken their views into account,provided always that where clause 16.11.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 16.11.6 The Service Provider shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

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

16.12 Transparency

- 16.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 16.12.2 Notwithstanding any other term of the Contract, the Service Provider hereby gives his consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.
- 16.12.3 The Customer may consult with the Service Provider to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 16.12.4 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

17. WARRANTIES AND REPRESENTATIONS

- 17.1 The Service Provider warrants, represents and undertakes to the Customer that:
- 17.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 17.1.2 the Contract is executed by a duly authorised representative of the Service Provider;
- 17.1.3 in entering the Contract it has not committed any Fraud;
- 17.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 17.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 17.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any

such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;

- 17.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 17.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 17.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 17.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;
- 17.1.11 at the Commencement Date it has not been convicted of any offence involving slavery and human trafficking; nor has it 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 Competition Procedure, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender; (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 Competition 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 Competition Procedure any act or thing of the sort described in this clause 17.1.12. In the context of this clause 17.1.12 the word 'person' includes any persons and any body or association, corporate or unincorporated; and 'any agreement or arrangement' includes any such transaction, formal or informal, and whether legally binding or not.

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

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

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

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

17.2.3.1 of satisfactory quality; and

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

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

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

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

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

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

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

17.4 The Service Provider acknowledges and agrees that:

17.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

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

18. LIABILITIES

CUSTOMER DRAFTING NOTE: the levels of insurance may be amended if the Contract is to be awarded via a further competition

18.1 Liability

- 18.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 18.1.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 18.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
 - 18.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 18.1.1.4 any claim under clause 17.1;
 - 18.1.1.5 any claim under the indemnity in clauses 11.2.6, [14], 16.4, in respect of a breach of clause 16.10; or
 - 18.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 18.1.2 Subject to clause 18.1.4 and clause 18.1.5 the Service Provider shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non-supply, of the Goods and/or Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly by any act or omission of the Service Provider.
- 18.1.3 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

- 18.1.4 Subject always to clause 18.1.1 and clause 18.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
- 18.1.4.1 all defaults resulting in direct loss to the property of the other Party shall in no event exceed ten million pounds (£10,000,000); and
 - 18.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed ten million pounds sterling (£10,000,000).
- 18.1.5 Subject to clause 18.1.1, in no event shall either Party be liable to the other for any:
- 18.1.5.1 loss of profits;
 - 18.1.5.2 loss of business;
 - 18.1.5.3 loss of revenue;
 - 18.1.5.4 loss of or damage to goodwill;
 - 18.1.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 18.1.5.6 any indirect, special or consequential loss or damage.
- 18.1.6 The provisions of 18.1.1 shall not be taken as limiting the right of the Customer to recover as a direct loss:
- 18.1.6.1 any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - 18.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default;
 - 18.1.6.3 the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider; and
 - 18.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Service Provider.
- 18.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the

Customer to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

18.2 Insurance

CUSTOMER DRAFTING NOTE: the levels of insurance may be amended if the Contract is to be awarded via a further competition

- 18.2.1 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the Contract Period.
- 18.2.2 The Service Provider shall hold employers liability insurance in respect of Staff with a minimum limit of **ten million pounds sterling (£10,000,000)** for any one occurrence.
- 18.2.3 The Service Provider shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of **ten million pounds sterling (£10,000,000)** for any one occurrence.
- 18.2.4 The Service Provider shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of **two million pounds sterling (£2,000,000)** for any one claim and in the aggregate, or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period.
- 18.2.5 The Service Provider shall effect and maintain a cyber liability insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of **two million pounds sterling (£2,000,000)** for any one claim and in the aggregate or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate cyber liability insurance during the Contract Period.
- 18.2.6 The Service Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 18.2.7 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 18.2.8 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause 18.
- 18.2.9 The Service Provider shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

18.3 Taxation, National Insurance and Employment Liability

- 18.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

19. TERMINATION

19.1 Termination on insolvency

- 19.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Service Provider where the Service Provider is a company and in respect of the Service Provider:
- 19.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

- 19.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 19.1.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 19.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 19.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 19.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or
 - 19.1.1.7 being a "small company" within the meaning of section 82(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 19.1.1.8 any event similar to those listed in clause 19.1.1.1 to 19.1.1.7 occurs under the law of any other jurisdiction.
- 19.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
- 19.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or
 - 19.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or
 - 19.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- 19.1.2.4 the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- 19.1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days; or
- 19.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 19.1.2.7 the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

19.2 Termination on Change of Control

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

- 19.2.1.1 being notified that a Change of Control has occurred or is planned or in contemplation; or
- 19.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

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

19.3 Termination on Default

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

- 19.3.1.1 the Service Provider has not remedied the Default to the satisfaction of the Customer within thirty (30) Working Days or such other longer period as may be specified by the

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

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

19.3.1.3 the Default is a material breach of the Contract; or

19.3.1.4 the Default concerns the Service Provider's obligations under this Contract in relation to the Modern Slavery Act 2015.

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

19.3.3 If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the period specified in clause 11.2, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 11.3 (Recovery of Sums Due).

19.4 **Termination of Framework Agreement**

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

19.5 **Termination on Financial Standing**

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

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

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

19.6 Termination on Audit

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

19.7 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in Schedule 6 of the Framework Agreement (Value for Money).

19.8 Partial Termination

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

19.9 Termination in compliance with Public Contracts Regulations 2015

The Customer may terminate Contracts where:

- 19.9.1 the Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;
- 19.9.2 the Service Provider has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or
- 19.9.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

19.10 [Termination without Cause

CUSTOMER DRAFTING NOTE: Consider if this clause is required. Its inclusion will result in the Service Provider calculating the contract value by reference only to any guaranteed duration e.g. the 12 month notice period.

'Termination without cause' means that the Customer (subject to giving the requisite notice) can terminate without any breach having occurred.

Subject to the content of clause 20.2 the Customer shall have the right to terminate the Contract at any time by giving not less than twelve (12) months written notice to the Service Provider.]

19.11 Termination on termination of the Mirror Framework

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

20. CONSEQUENCES OF EXPIRY OR TERMINATION

20.1 Where the Customer terminates the Contract under clauses 19.3 (Termination on Default), 19.6 (Financial Standing), 19.7 (Audit), 19.8 (Benchmarking) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 19.3, 19.6, 19.7 and 19.8, no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.

CUSTOMER DRAFTING NOTE: Delete the following clause if clause 19.10 is deleted

20.2 [Subject to clause 20 where the Customer terminates the Contract under clause 19.10 (Termination without Cause), the Customer shall indemnify the Service Provider against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under clause 19.10 (Termination without Cause).]

20.3 The Customer shall not be liable under clause 20.2 to pay any sum which:

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

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

- 20.4 On the termination of the Contract for any reason, the Service Provider shall:
- 20.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;
 - 20.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Service Provider with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Service Provider;
 - 20.4.3 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 Service Provider under clause 4.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
 - 20.4.5 transfer to the Customer and/or the Replacement Service Provider (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Service Provider and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Service Provider in respect of such Licensed Goods and/or contracts and/or any other items of relevance;
 - 20.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or provide all such assistance and co-operation as the Customer may reasonably require;
 - 20.4.7 return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and
 - 20.4.8 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.

- 20.5 If the Service Provider fails to comply with clause 20.4.1 and 20.4.8, the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted agents or Sub-Contractors where any such items may be held.
- 20.6 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 20.4.5 and 20.4.8 free of charge. Otherwise, the Customer shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.
- 20.7 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 the Contract:
- 20.8.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 20.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 16 (Intellectual Property Rights), 16.8 (Protection of Personal Data), 16.10 (Confidentiality), 16.11 (Freedom of Information), 18 (Liabilities), 20 (Consequences of Expiry or Termination), 25 (Prevention of Bribery and Corruption), 26 (Records and Audit Access), 27 (Prevention of Fraud), 31 (Cumulative Remedies), 37 (Conflicts of Interest), 39 (The Contracts (Rights of Third parties) Act 1999) and 42.1 (Governing Law and Jurisdiction).

21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 21.1 The Service Provider shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, Service Providers, professional advisors and consultants comply with this clause 21. Any such press announcements or publicity proposed under this clause 21.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 21.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

21.3 The Service Provider shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

22. ANTI-DISCRIMINATION

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

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

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

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

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

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

22.7 The Service Provider acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Service Provider shall provide all necessary assistance and information to the Customer as may be required in relation to the

performance of an impact analysis by the Customer. The Service Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

23. HEALTH AND SAFETY

- 23.1 The Service Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 23.2 While on the Customer's Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 23.3 The Service Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 23.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.
- 23.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Customer on request.

24. ENVIRONMENTAL REQUIREMENTS

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

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

25. PREVENTION OF BRIBERY AND CORRUPTION

- 25.1 The Service Provider shall not:

- 25.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other

consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

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

25.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

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

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

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

25.3 The Service Provider shall:

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

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

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

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

25.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants,

agents or Sub-Contractors, or any person acting on the Service Provider's behalf from committing a Prohibited Act and shall enforce it where appropriate.

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

25.4.1 this clause 25; or

25.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

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

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

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

26. RECORDS AND AUDIT ACCESS

26.1 The Service Provider shall keep and maintain for six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and/or Services provided under it, 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 Service Provider shall keep the records and accounts referred to in clause 26.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

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

- 26.3.1 to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Service Provider (including Sub-Contractors) of the Services;
 - 26.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Service Provider;
 - 26.3.3 to review the Service Provider's compliance with the DPA in accordance with this Contract and any other Laws;
 - 26.3.4 to review the Service Provider's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;
 - 26.3.5 to review the Service Provider's compliance with its security obligations set out in clause 16;
 - 26.3.6 to review any books of account kept by the Service Provider in connection with the provision of the Service;
 - 26.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - 26.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - 26.3.9 to ensure that the Service Provider is complying with its obligations under this Contract, including but not limited to its obligations thereunder relating to the Modern Slavery Act 2015.
- 26.4 The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 26.5 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) on request during the Contract Period and for a period of six (6) Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.
- 26.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services or supply of Goods save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 26.7 Subject to the Service Provider's rights in respect of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:

- 26.7.1 all reasonable information requested by the Customer within the scope of the audit;
 - 26.7.2 reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Goods and/or Services; and
 - 26.7.3 access to the Staff.
- 26.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

27. PREVENTION OF FRAUD

- 27.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 27.2 The Service Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Service Provider or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 27.3 If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
- 27.3.1 terminate the Contract with immediate effect by giving the Service Provider notice in writing; and/or
 - 27.3.2 recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 27 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

28. TRANSFER AND SUB-CONTRACTING

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

29. FORCE MAJEURE

- 29.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.
- 29.2 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Service Provider shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Service Provider is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 29.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 29.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 29.4 If an event of Force Majeure event affects the Services, the Customer may direct the Service Provider to procure those Goods and/or Services from a third party Service Provider in which case the Service Provider will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 29.5 The Service Provider will not have the right to any payment from the Customer under this Contract where the Service Provider is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Service Provider to use a replacement Service Provider pursuant to sub-clause 29.4, then the Customer will pay the Service Provider (a) the Contract Price; and (b) the difference between the Contract Price and the new Service Provider's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Service Provider's costs are greater than the Contract Price.

30. WAIVER

- 30.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 30.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 40 (Notices).

30.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

31. CUMULATIVE REMEDIES

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

32. FURTHER ASSURANCES

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

33. VARIATION

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

34. SEVERABILITY

34.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

34.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

35. MISTAKES IN INFORMATION

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

36. SERVICE PROVIDER'S STATUS

36.1 At all times during the Contract Period the Service Provider shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

37. CONFLICTS OF INTEREST

- 37.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.
- 37.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 37.1 above arises or is reasonably foreseeable.
- 37.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the either party.
- 37.4 This clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

38. ENTIRE AGREEMENT

- 38.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 38.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
- 38.3 The Service Provider acknowledges that it has:
- 38.3.1 entered into the Contract in reliance on its own due diligence alone; and
 - 38.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.
- 38.4 Nothing in clauses 38.1 and 38.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 38.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

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

39.1 A person who is not a Party to the Contract except ESPO or, as appropriate, the Trading Company in relation to its right to claim retrospective rebate from the Service Provider under the payment clause has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

CUSTOMER DRAFTING NOTE: 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 (CROTPA) shall apply to clause 14 to the extent necessary that any Former Service Provider and Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Former Service Provider and the Replacement Service Provider by the Service Provider under that clause 14 in its own right pursuant to clause 1(1) of CROTPA.]

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

40. NOTICES

40.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

40.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 40.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

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

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

41. LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

- 41.1 The Service Provider shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a general change in law.
- 41.2 The Parties acknowledge that during the Term of this Contract the local government structure in the Customer's administrative areas may be subject to change. These administrative changes may give rise to the need for the Customer to terminate this Contract and/or seek its potential variation with any successor or assignee of the Customer. The Customer shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.

42. DISPUTES AND LAW

42.1 Governing Law and Jurisdiction

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

42.2 Dispute Resolution

- 42.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of the Customer's Representative and the Service Provider's Representative.
- 42.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 42.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 42.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 42.2.5 unless:
- 42.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 42.2.3.2 the Service Provider does not agree to mediation.
- 42.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.

42.2.5 The procedure for mediation is as follows:

- 42.2.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;
- 42.2.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider appointed by CEDR to provide guidance on a suitable procedure;
- 42.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 42.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 42.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 42.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

SCHEDULE 1

SERVICE LEVELS AND SERVICE CREDITS (where appropriate)

1. SCOPE

This schedule 1 sets out the Service Levels which the Service Provider is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Service Provider's performance of the Services by the Service Provider 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

2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels and Service Credits are to:

- 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
- 2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Service Provider's failure to deliver the level of Service for which it has contracted to deliver; and
- 2.1.3 incentivise the Service Provider to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

3. SERVICE LEVELS

- 3.1 The Appendix to this Part A of this schedule sets out Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Service Provider 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.
- 3.3 If the level of performance of the Service Provider of any element of the Services during Contract Period:

- 3.3.1 fails to achieve a Service Level in respect of each 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
- 3.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 19.3

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

SERVICE LEVELS AND SEVERITY LEVELS

CUSTOMER DRAFTING NOTE: Customers will need to carefully consider any service levels which may be appropriate, depending on their individual requirements. It is anticipated that Customers will discuss suitable key performance indicators and service levels with the Service Provider prior to entering into a formal Call-Off Contract under the Framework.

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

CUSTOMER DRAFTING NOTE: Amend/insert the appropriate service credits if/where appropriate.

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

Formula - 100% - % of Service Level achieved = x% of the Contract Charges to be deducted from the next invoice payable by the Customer.

Worked example - 100% (e.g. Service Level requirement for data accuracy) - 75% (e.g. accuracy of data) = 25% of the Contract Charges to be deducted from the next invoice payable by the Customer

PART B

PERFORMANCE MONITORING

CUSTOMER DRAFTING NOTE: Service Provider 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 Service Provider is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Service Provider and/or delivery of the Services ("**Performance Monitoring System**").
- 1.2 Within 20 Working Days of the Commencement Date the Service Provider 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 Customer shall report all failures to achieve Service Levels 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 Service Provider 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:
 - 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 failures to achieve Service Levels that occurred during that period;
 - 3.1.3 any Critical Service Failures and details in relation thereto;
 - 3.1.4 for any repeat 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 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 Service Provider 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 Service Provider;
 - 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 Service Provider's Representative and the Customer's Representative; and
 - 3.2.4 be fully minuted by the Service Provider. The prepared minutes will be circulated by the Service Provider 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 preceding month's Performance Review Meeting will be agreed and signed by both the Service Provider'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 failure to achieve Service Levels.
- 3.4 The Service Provider 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 Service Provider 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 Service Provider, the Customer may undertake satisfaction surveys in respect of the Service Provider's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Service Provider 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 programme pursuant to paragraph 3 of schedule 6 of the Framework Agreement.

SCHEDULE 2

IMPLEMENTATION PLAN AND MILESTONES

1. IMPLEMENTATION PLAN

- 1.1 The Service Provider 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 Service Provider 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 Service Provider shall ensure that each version of the Implementation Plan is subject to Approval. The Service Provider 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 Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.

2. MILESTONES

- 2.1 The Service Provider 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 Service Provider 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 Service Provider'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 Service Provider shall pay to the Customer Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Customer provides the Service Provider with confirmation in writing of its satisfaction that the Milestone has been met.
- 2.4 No payment or concession to the Service Provider 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 for breach.

FRAMEWORK SCHEDULE 4 - ORDERING PROCEDURE

1. INTRODUCTION

If any Customer (including ESPO) decides to source the Goods and/or Services through the Framework then it will award its Goods and/or Services Requirements in accordance with the procedure in this Framework Schedule and the requirements of the Regulations and the Guidance.

AWARD PROCEDURE (DIRECT CALL OFF)

1.1 If a Customer can determine that:

1.1.1 the Service Provider provides the most economically advantageous solution in respect of the Customer's Goods and/or Services Requirements; and

1.1.2 all of the terms of the proposed contract are laid down in this Framework Agreement and do not require amendment or any supplementary terms and conditions;

then the Customer may submit a Form of Contract together with a Master Contract Schedule to the relevant Framework Service Provider which shall be signed by both parties.

For the avoidance of doubt the Framework Charges shall apply to all Contracts entered into or orders placed by a Customer in accordance with this paragraph.

1.2 If all of the terms of the proposed contract are **not** laid down in this Framework Agreement and a Customer:

1.2.1 requires the Service Provider to develop proposals or a solution in respect of such Customer's Goods and/or Services Requirements; and/or

1.2.2 needs to amend or refine the terms of the Contract to reflect its Goods and/or Services Requirements to the extent permitted by and in accordance with the Regulations and Guidance;

then the Customer shall follow the procedures set out in the Award Procedure (Further Competition).

AWARD PROCEDURE (FURTHER COMPETITION)

2.1 CUSTOMER'S OBLIGATIONS

Any Customer ordering Goods and/or Services under the Framework through a further competition should:

- 2.1.1 develop a Statement of Requirements setting out its requirements for the Available Goods and/or Services and identify the Framework Service Providers capable of supplying the Goods and/or Services;
- 2.1.2 refine the terms of the Contract to reflect its Goods and/or Services Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- 2.1.3 invite tenders by conducting a further-competition for its Goods and/or Services Requirements in accordance with the Regulations and Guidance and in particular:
 - (a) invite the Framework Service Providers to develop a proposed statement of work (covering Goods and/or Services as applicable) setting out their respective proposals in respect of such Customer's Statement of Requirements ("Statement of Work") and invite the Framework Service Providers to submit a tender in writing for each specific contract to be awarded by giving written notice by email to the relevant Service Provider Representative of each Framework Service Provider;
 - (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
 - (c) keep each tender confidential until the time limit set out in paragraph 2.1.3 (b) above has expired.
- 2.1.4 apply the Further Competition Award Criteria to the Framework service providers' compliant tenders submitted through the further competition as the basis of its decision to award a Contract for its Goods and/or Services Requirements;
- 2.1.5 on the basis set out above, award its Goods and/or Services Requirements by awarding a contract to the successful Framework Service Provider which:
 - (a) states the Goods and/or Services Requirements;
 - (b) states the Statement of Work submitted by the successful Framework Service Provider;
 - (c) states the charges payable for the Goods and/or Services Requirements in accordance with the tender submitted by the successful Framework Service Provider; and

- (d) incorporates the terms of the Contract applicable to the Goods and/or Services,

2.1.6 Notify unsuccessful Framework Service Providers of the outcome of the further competition process.

2.1.5 The Customer will send to the awarded Framework Service Provider a Form of Contract and Master Contract Schedule for signature by the Framework Service Provider which shall be returned to the Customer to sign. The Customer shall return one copy of the Form of Contract and Master Contract Schedule and supply the other to the Framework Service Provider.

2.2 THE CONTRACTOR'S OBLIGATIONS

The Service Provider will in writing, by the time and date specified by the Customer in accordance with paragraph 2.2.2 (b) provide the Customer with either:

2.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Goods and/or Services Requirements; or

2.2.2 the Statement of Work and full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Service Provider submits a Statement of Work, it should include, as a minimum:

- (a) an email response subject line to comprise unique reference number and Service Provider's name, so as to clearly identify the Service Provider;
- (b) a brief summary, in the email, stating whether or not the Service Provider is bidding for the Statement of Requirements;
- (c) a proposal covering the Goods and/or Services Requirements;
- (d) CVs of Key Personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels.

2.2.3 The Service Provider shall ensure that any prices submitted in relation to a further competition held pursuant to this paragraph shall be based on the Charging Structure and take into account any discount to which the Customer may be entitled as set out in Framework Schedule 2 (Charging Structure).

2.2.4 The Service Provider agrees that:

- (a) all tenders submitted by the Service Provider in relation to a further competition held pursuant to this paragraph shall

remain open for acceptance by the Customer for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with the Ordering Procedure); and

- (b) all tenders submitted by the Service Provider are made in good faith and that the Service Provider has not fixed or adjusted the amount of the offer by or in accordance with any agreement or arrangement with any other person. The Service Provider certifies that it has not and undertakes that it will not:
 - (i) communicate to any person other than the person inviting these offers the amount or approximate amount of the offer, except where the disclosure, in confidence, of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the offer; and
 - (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from making an offer or as to the amount of any offer to be submitted.

2. E-AUCTIONS

- 2.1 One or more Customers may use an electronic reverse auction to evaluate tenders and award a Contract as part of a further competition process. The Service Provider shall comply with documentation issued by the relevant Customer in connection with the e-auction.

3. NO AWARD

- 3.1 Notwithstanding the fact that the Customer has followed a procedure as set out above, the Customer shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Framework Agreement shall oblige any Customer to enter into a Contract for the Goods and/or Services or to accept any tenders that may be received.

4. RESPONSIBILITY OF AWARDS

- 4.1 The Service Provider acknowledges that each Customer is independently responsible for the conduct of its award of a Contract under the Framework and that ESPO is not responsible or accountable for and shall have no liability whatsoever in relation to:-
 - (a) the conduct of Customers in relation to the Framework; or
 - (b) the performance or non-performance of any Contracts between the Service Provider and Customers entered into pursuant to the Framework.

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FRAMEWORK SCHEDULE 5 - FURTHER COMPETITION AWARD CRITERIA

The following criteria shall be applied to the Goods and/or Services set out in the Service Provider’s compliant tenders submitted through the Further Competition Procedure:

AWARD CRITERIA		
	Lots 1-9	Lot 10
Non-Price	60%	80%
Price	30%	10%
Social Value	10%	10%

In any event the same criteria (or closely associated) as those used in the establishment of the Framework Agreement must be used.

ESPO and/or Customers may vary the weightings provided that they are relevant and proportionate to the requirements of the Order and communicated to tenderers.

FRAMEWORK SCHEDULE 6 - VALUE FOR MONEY

1. BACKGROUND

- 1.1 The Service Provider acknowledges that ESPO wishes to ensure that the Goods and/or Services, represent value for money for its Customers throughout the Term of this Framework Agreement.
- 1.2 This Framework Schedule sets out the following processes to ensure this Framework Agreement represents value for money throughout the Term:
 - 1.2.1 Benchmarking;
 - 1.2.2 Continuous Improvement;

2. BENCHMARKING

- 2.1 Frequency, Purpose and Scope of Benchmark Review
 - 2.1.1 ESPO shall not be entitled to request a Benchmark Review during the six (6) Month period from the Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.
 - 2.1.2 The purpose of a Benchmark Review will be to establish whether the Benchmarked Rates are, individually and/or as a whole, good value.
 - 2.1.3 The rates that are to be the benchmarked rates will be identified by ESPO in writing.
- 2.2 Benchmarking Process
 - 2.2.1 The Service Provider shall produce and send to ESPO a benchmark report which shall include:
 - 2.2.1.1 the product and/or rates identified by ESPO in accordance with clause 2.1.3.
 - 2.2.1.2 a description of the benchmarking methodology used by the Service Provider.
 - 2.2.1.3 the items utilised in the comparison of the Service Provider's rates.
 - 2.2.1.4 the market intelligence utilised in the process including any relevant published information.
 - 2.2.1.5 a clear statement of the Service Provider's own benchmarked rates.

- 2.2.1.6 demonstrate the extent to which the Service Provider's rates remain competitive against the average of the comparison rates.
- 2.2.2 The Service Provider shall provide evidence of the extent to which exchange rates, import tax or other such levies may influence the Service Provider's rates, and/or major events affecting its supply chain.
- 2.2.3 The Service Provider shall also provide information on any other reasonable factors which if not taken into account could unfairly cause the Service Provider's rates to appear non-competitive.
- 2.2.4 The Service Provider agrees to vary his rates to equal those of the benchmarked rates if so required by ESPO by formal notification in writing specifying the date from which the varied rates shall apply ("Implementation Date") and to apply such rates to the Customer Contracts in being at the Implementation Date.

3. CONTINUOUS IMPROVEMENT

- 3.1 The Service Provider shall adopt a policy of continuous improvement in relation to the Goods and/or Services pursuant to which it will regularly review with ESPO the Services and the manner in which it is providing the Goods and/or Services with a view to reducing ESPO's costs (including the Framework Prices), the costs of Customers and/or improving the quality and efficiency of the Goods and/or Services. The Service Provider and ESPO will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

FRAMEWORK SCHEDULE 7 - MANAGEMENT INFORMATION REQUIREMENTS

MANAGEMENT INFORMATION

1. GENERAL REQUIREMENTS

- 1.1 The Service Provider shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to ESPO in accordance with the provisions of this Framework Schedule.
- 1.2 The Service Provider shall also supply such management information as may be required by a Customer in accordance with the terms of a Contract.
- 1.3 The Service Provider will be provided with one month's written notice of any significant changes to management information reporting requirements (including changes to MI Templates and reporting frequencies).

2. MANAGEMENT INFORMATION REPORTS

- 2.1 The Service Provider agrees to provide full, accurate and complete MI Reports to ESPO which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this Framework Schedule.

3. FREQUENCY AND COVERAGE

- 3.1 All MI Reports must be completed by the Service Provider using the MI Reporting Template and returned to ESPO on or prior to the Reporting Date every quarter during the Term and thereafter, until all transactions relating to Contracts have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report Contracts entered into, orders received and transactions with values occurring during the quarter to which the MI Report relates, regardless of when the work was actually completed. Each Contract entered into by the Service Provider must be reported only once when the Contract is entered into.
- 3.3 The Service Provider must return the MI Report for each quarter even where there are no transactions to report in the relevant quarter; referred to as a "**Nil Return**".

4. DEFAULT RETROSPECTIVE REBATE

- 4.1 If the Service Provider (for any reason) fails to submit a valid MI Report then ESPO shall be entitled to charge a "Default Retrospective Rebate" which shall be calculated as the higher of:
 - 4.1.1 the average Retrospective Rebate paid or payable by the Service Provider to ESPO and the Trading Company based on any Management Information submitted in the preceding period; or

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- 4.1.2 a sum based on Management Information collated by ESPO from customer information and records which in ESPO's reasonable opinion properly reflects the level of business conducted by the Service Provider under this Framework Agreement throughout the period covered by the MI Default.

5. SUSPENSION AND TERMINATION RIGHTS

- 5.1 Notwithstanding any other rights available to ESPO in this Framework Schedule, ESPO may terminate or suspend this Framework Agreement pursuant to clause 26 (Termination) in the event of a Consistent Failure or a material default occurs.

REPORTING ANNEX – MI REPORTING TEMPLATE

As a minimum the Service Provider will include the following information in their MI report.

Name of Customer Organisation	Total Invoiced to Customer during period	Customer Contact Name	Customer Email Address	Procurement Route	Lot Used	Brief Description of Contract	Start Date of Contract	End Date of Contract	Option to Extend Until	Total Value of Contract Agreed	Supplier Reference Code	Is this piece of work now complete? (Y/N)	Type of Social Value delivered	Value £ of Social Value delivered

FRAMEWORK SCHEDULE 8 - MARKETING

1. INTRODUCTION

- 1.1 This Framework Schedule describes the activities that the Service Provider will carry out as part of its on-going commitment to the marketing of this Framework Agreement to Customers and should be read in conjunction with Schedules 1 (The Goods and/or Services) and 2 (Charging Structure).

2. MARKETING

- 2.1 Marketing contact details:

2.1.1 [Insert name]

2.1.2 [Insert Address]

2.1.3 [Insert Telephone and email]

3. PUBLICATIONS

- 3.1 ESPO will periodically update and revise marketing materials. The Service Provider shall supply current information for inclusion in such marketing materials when required by ESPO.
- 3.2 Such information shall be provided in the form of a completed template, supplied by ESPO together with the instruction for completion and the date for its return.
- 3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Service Provider's exclusion from the use of such marketing materials.

4. SUPPLIER PUBLICATIONS

- 4.1 Any marketing materials in relation to this Framework that the Service Provider produces must comply in all respects with ESPO's branding guidelines. The Service Provider will periodically update and revise such marketing materials.
- 4.2 The Service Provider shall be responsible for keeping under review the content of any information which appears on the Service Provider's website and which relates to this Framework and ensuring that such information is kept up to date at all times.

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FRAMEWORK SCHEDULE 9 - COMMERCIALY SENSITIVE INFORMATION (IF ANY)

Please note: where any information listed in this Commercially Sensitive Information Schedule is considered to be Management Information for the purposes of clause 15 of the Framework Agreement and is provided by the Service Provider to ESPO, ESPO may disclose the Management Information to Customers in accordance with clause 15 of this Framework Agreement.

The Service Provider's completed Commercially Sensitive Information form supplied with its tender shall be incorporated into this schedule.

[TO BE INSERTED]

FRAMEWORK SCHEDULE 10 - FRAMEWORK MANAGEMENT INCLUDING SERVICE LEVELS AND KEY PERFORMANCE INDICATORS

1. INTRODUCTION

- 1.1 The successful delivery of this Framework Agreement will rely on the ability of the Service Provider and ESPO in developing a strategic relationship immediately following award and maintaining this throughout this Framework Agreement.
- 1.2 To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality management information, and the sharing of information between the Service Provider and ESPO.
- 1.3 This Schedule outlines the general structures and management activities that the Parties shall follow during the Term of this Framework Agreement.

2. FRAMEWORK MANAGEMENT

2.1 Framework Management Structure

- 2.1.1 The Service Provider shall provide a suitably qualified nominated contact (the "**Framework Manager**") who will take overall responsibility for delivering the services required within this Framework Agreement, as well as a suitably qualified deputy to act in their absence.
- 2.1.2 The Service Provider shall put in place a structure to manage the Framework in accordance with Schedule 1 (Goods and/or Services) and to the Service Levels and KPIs as set out in the Annex to this Schedule.
- 2.1.3 A full governance structure for the Framework will be agreed between the Parties during Framework Agreement implementation stage.

2.2 Framework Review Meetings

- 2.2.1 Regular performance reviews will take place throughout the Framework Agreement ("**Framework Review Meetings**"). The Service Provider's Representative and the ESPO Representative shall hold a Framework Review Meeting, the timings of which are to be agreed as per 2.2.2
- 2.2.2 The exact timings and frequencies of such Framework Review Meetings will be determined by ESPO following award of the Framework Agreement. It is anticipated that during the first 12 months of the Framework Agreement the structure and frequency of the meetings will be as set out in clause 2.2.1. Flexibility from both Parties will be expected over the frequency, timings and content of these reviews.
- 2.2.3 ESPO sees these meetings as a vital element in developing a strategic relationship with the Service Provider and to promote the building of a

positive working relationship. The content of these meetings will be agreed between both Parties at least 14 days before the date of the Framework Review Meeting.

2.2.4 The Framework Review Meetings shall consider both strategic and operational aspects of the framework. The Framework Review Meetings shall as a minimum focus on:

Strategic aspects:

- (a) Overall framework performance including Service Provider's supply chain performance, including an assessment of SME's being used to supply and/or deliver goods and/or services;
- (b) Efficiency opportunities, e.g. cost drivers (Service Provider and ESPO);
- (c) Benchmarking including progress against Government efficiency targets;
- (d) Market conditions (UK/Global market share, financials);
- (e) Policy updates including emerging government initiatives;
- (f) Security and risk management.

Operational aspects:

- (a) Transition and on-boarding of key new customers (milestones and progress against targets) including contract compliance and Service Provider sector strategies (*key customers can be defined as those of whom are of a strategic importance to the success of the framework*);
- (b) Compliance against key performance indicators (KPI's) (e.g. response times, up time, first time fix rates, no. of units sold, volume of prints, exceptions reports);
- (c) Framework revenue and savings performance, submission of management information, sector revenue performance;
- (d) Incident and problem management including Service Provider helpdesk performance;
- (e) Forward planning, opportunities and future efficiencies including standardisation and rationalisation;
- (f) Customer satisfaction (quality of Goods, delivery of service etc);
- (g) New product roadmaps;

- (h) Support to category team relating to cashable benefits;
- (i) Environmental savings and initiatives and impact on environment;

3. SERVICE LEVELS

- 3.1 The Service Provider shall be required to deliver Goods and/or Services through this Framework Agreement in accordance with the service levels set out in Schedule 1 (The Goods and/or Services).
- 3.2 ESPO reserves the right to adjust and revise these service levels during the Framework Agreement, however any significant changes will be agreed between ESPO and the Service Provider.

4. SERVICE LEVELS FOR CUSTOMERS

- 4.1 The service levels set out in Schedule 1 (Goods and/or Services) shall be the minimum services levels applicable to all Customers accessing this Framework Agreement together with the service levels set out in the Call-Off Terms.

5. KEY PERFORMANCE INDICATORS *NB to be completed as appropriate*

- 5.1 The Key Performance Indicators (KPIs) applicable to this Framework Agreement are set out in the table below.
- 5.2 The Service Provider shall establish processes to monitor its performance against the agreed KPIs in order to report progress to the Customer. The Service Provider shall at all times ensure compliance with the standards set by the KPIs.
- 5.3 ESPO shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Service Provider performs its obligation to fulfil the Framework Agreement.
- 5.4 The Service Provider's achievement of KPIs shall be reviewed during Framework Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the framework management process as outlined in this Schedule.
- 5.5 The Service Provider shall provide a quarterly report on its performance against each of the KPIs listed in Annex A (and /or any KPIs introduced as per paragraph 5.6 below).
- 5.6 ESPO reserves the right (acting reasonably) to adjust, introduce new, or remove KPIs throughout the Contract Period; however any significant changes to KPIs shall be agreed between ESPO and the Service Provider.

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ANNEX A

KEY PERFORMANCE INDICATORS

The following default KPIs will be initially applied by ESPO from the Commencement Date of this Framework Agreement.

Performance Criteria	Key Indicator	Performance Measure
Complaints Resolution	Resolution of Customer complaints	100% of complaints to be responded to within 2 working days of receipt of the complaint. 98% of complaints to be resolved or have an agreed action plan in place within 10 working days.
Return of MI	Accuracy/ Timeliness	The Service Provider shall ensure that no less than 11 separate monthly returns are made correct and on time (by 7 th of each month) in each calendar year
Update of information to ESPO (e.g. contact details etc)	Number of occurrences of inaccurate information annually.	No more than one discrepancy identified in any 1 calendar year
Invoicing	Accurate	98% accuracy rate every month