



**Crawley BC, Horsham DC, Mid Sussex
DC, Mole Valley DC**

CRBC032025 - Temporary Agency Staff DPS

**Call Off Terms & Conditions
(schedule 3 of Framework Agreement)**

**DYNAMIC PURCHASING SYSTEM FOR THE PROVISION OF
TEMPORARY AGENCY STAFF
TO CRAWLEY BOROUGH COUNCIL, HORSHAM DISTRICT COUNCIL,
MID SUSSEX DISTRICT COUNCIL AND MOLE VALLEY DISTRICT COUNCIL**

**SCHEDULE 3 OF THE DPS FRAMEWORK AGREEMENT
CALL-OFF TERMS AND CONDITIONS**

PARTIES

(1) [COUNCIL NAME] of [COUNCIL ADDRESS]

(Customer(s))

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]

(Supplier)

BACKGROUND

The Customer has awarded this Contract to the Supplier on the following terms and conditions following a competitive process using a dynamic purchasing system and the Supplier agrees to provide the Service in accordance with this Contract and the Framework Agreement.

GENERAL PROVISIONS

1. DEFINITIONS

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

Approval: the prior written approval of the Customer.

Auditor: the National Audit Office or an auditor appointed by the Customer as the context requires.

Authority: Crawley Borough Council, being the contracting authority that established the Framework Agreement.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement 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.

Contract: the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses (except that, for the purposes of Clause 45.3 only, reference to "Contract" shall not include the Order Form).

Contract Period: the period from the Service Commencement Date to:

- a. the date of expiry set out in Clause 3;
- b. following an extension pursuant to Clause 4, the date of expiry of the extended period; or
- c. such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

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

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Contracting Authority: any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) other than the Customer.

Data Protection Legislation: has the meaning given at Clause 18.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Deliverables: those deliverables listed in the Order Form.

Dispute Resolution Procedure: the dispute resolution procedure in Clause 43.

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- a. any industrial action occurring within the Supplier's or any Sub-Contractor's organisation;
- or
- b. the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Framework Agreement: the framework agreement for the provision of temporary agency staff Services between the Authority and the Supplier dated [DATE].

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Information: has the meaning given under section 84 of the FOIA.

Initial Contract Period: the period set out in Clause 3.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, [enforceable community right within the meaning of section 2 of the European Communities Act 1972], regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply.

Month: calendar month.

Order: the order placed by the Customer to the Supplier in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the timeframe, the Deliverables and the Quality Standards.

Order Form: the document used to place an Order, contained at Schedule 2 of the DPS Framework Agreement.

Party: the Supplier or the Customer and Parties shall mean both the Supplier and the Customer.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

SQ Response: the response to the selection questionnaire issued by the Authority and submitted by the Supplier on [DATE].

Premises: the location where the Services are to be supplied, as set out in the Order Form.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Customer.

Property: the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

Replacement Supplier: any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Service Commencement Date: the service commencement date set out in the Order Form.

Services: the provision of temporary agency staff services to be supplied as specified in the Order Form.

Staff: all persons employed by the Supplier to perform its obligations under the Contract but excluding for the avoidance of doubt any Temporary Agency Staff together with the Supplier's agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

Sub-Contract: any contract between the Supplier and a third party under which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Supplier.

Tender: the document(s) submitted by the Supplier to the Authority for admission onto the Framework Agreement as supplemented by the documents submitted to the Customer in response to the Customer's Order, including the Supplier's Supplemental Tender.

UK Data Protection Legislation: has the meaning given at Clause 18

Variation: has the meaning given to it in Clause 30.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

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

2. INTERPRETATION

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) 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;
- (e) 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;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3. INITIAL CONTRACT PERIOD

The Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. EXTENSION OF INITIAL CONTRACT PERIOD

The Customer may, by giving written notice to the Supplier not less than 6 Month(s) before the last day of the Initial Contract Period, extend the Contract for any further period or periods specified in the Order Form provided that the total Contract Period does not exceed 5 years. The provisions of the Contract will apply throughout any such extended period.

5. SUPPLIER'S STATUS

At all times during the Contract Period the Supplier shall be an independent service provider 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 except as expressly permitted by the terms of the Contract.

6. CUSTOMER'S OBLIGATIONS

Except as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.

7. MISTAKES IN INFORMATION

The Supplier shall be responsible for the accuracy of all drawings, documents and information (excluding for avoidance of doubt any candidate CVs or application materials) supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

8. SERVICES

8.1. The Supplier shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Price.

8.2. The Supplier acknowledges that it has made 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 before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

8.3. The Supplier shall:

- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
- (b) to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Customer before the supply of the Services; and
- (c) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

8.4. The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

9. ENVIRONMENTAL REQUIREMENTS

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

10. HEALTH AND SAFETY

The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the

Premises and which may affect the Supplier in the performance of its obligations under the Contract.

- 10.1. While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 10.2. The Supplier 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.
- 10.3. The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 10.4. The Supplier 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.

PAYMENT AND CONTRACT PRICE

11. CONTRACT PRICE

- 11.1. All costs, expenses and liabilities incurred by the Supplier in connection with the preparation and submission of any Tender will be borne by the Supplier.
- 11.2. In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 12.
- 11.3. The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

12. PAYMENT AND VAT

- 12.1. The Supplier shall ensure that each invoice is submitted in accordance with the payment profile set out in the Order Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Customer to substantiate the invoice. If it is an electronic invoice it must also comply with the standard on electronic invoicing. For these purposes "electronic invoice" means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 12.2. Where the Supplier submits an invoice (including an electronic invoice) to the Customer in accordance with Clause 12.1, the Customer will consider and verify that invoice within [7] days.
- 12.3. The Customer shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 12.4. Where the Customer fails to comply with Clause 12.3, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Customer.
- 12.5. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
 - (a) provisions having the same effect as Clause 12.2 to Clause 12.4 of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clause 12.2 to Clause 12.4 of this agreement.

In this Clause 12.5, "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 any part of this agreement.

- 12.6. The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 12.7. The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 12.7 shall be paid by the Supplier to the Customer not less than five Working Days before the date on which the tax or other liability is payable by the Customer.
- 12.8. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under Clause 38 for failure to pay undisputed sums of money.

13. RECOVERY OF SUMS DUE

- 13.1. Wherever under the Contract any undisputed sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of 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 Supplier under the Contract or under any other agreement or contract with the Customer.
- 13.2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 13.3. The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 13.4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

14. CONFLICTS OF INTEREST

- 14.1. The Supplier shall take appropriate steps to ensure that neither the Supplier 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 Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 14.2. The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 14.1 above arises or is reasonably foreseeable.
- 14.3. The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier 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 Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

15. PREVENTION OF BRIBERY

- 15.1. The Supplier:

- 15.2.
- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Contract commit a Prohibited Act; and
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.
- 15.3. The Supplier shall:
- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - (b) The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 15.4. The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 15.5. If any breach of Clause 15.1 is suspected or known, the Supplier must notify the Customer immediately.
- 15.6. If the Supplier notifies the Customer that it suspects or knows that there may be a breach of Clause 15.1, the Supplier must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this Contract.
- 15.7. The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 15.1. In determining whether to exercise the right of termination under this Clause 15.7, the Customer shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
- (a) with the authority or with the actual knowledge of any one or more of the directors of the Supplier or the Sub-contractor (as the case may be); or
 - (b) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.
- 15.8. Any notice of termination under Clause 15.7 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate.
- 15.9. Despite Clause 43, any dispute relating to:
- (a) the interpretation of Clause 15; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Customer and its decision shall be final and conclusive.

15.10. Any termination under Clause 15 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

16. DISCRIMINATION

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

16.2. The Supplier shall take all reasonable steps to secure the observance of Clause 16 by all servants, employees or agents of the Supplier and all suppliers and Sub-contractors employed in the execution of the Contract.

INFORMATION

17. CONFIDENTIALITY

17.1. Subject to Clause 17.3, the parties shall keep confidential the Confidential Information of the other Party and all matters relating to this Contract and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

17.2. Clause 17.1 shall not apply to any disclosure of information:

- (a) required by any applicable law;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) that is reasonably required by the Customer;
- (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 17.1;
- (e) by the Customer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
- (f) to enable a determination to be made under Clause 43;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Customer relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

17.3. On or before the expiry of the Contract, the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Customer or securely destroyed.

18. DATA PROTECTION

In this Clause 18, the following definitions shall have the meanings given.

DEFINITIONS

Agreed Purposes: data associated with recruitment, assignment and administration of temporary staff supplied by the Supplier.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as set out in the UK Data Protection Legislation in force at the time.

Data Discloser: a Party that discloses Shared Personal Data to the other Party.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection authority applicable to a Party

Permitted Recipients: the Parties to this agreement, the employees of each Party, any third parties engaged to perform obligations in connection with this agreement, and such agencies or authorities as the Customer may be required to advise from time to time.

Shared Personal Data: the personal data to be shared between the Parties under Clause 18.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Personal details, nationality, NI, qualifications;
- b) Driving licence and convictions, any other criminal issues and protected data issues depending on role (DBS checks), and
- c) [type of personal data].

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

18.1 **Shared Personal Data.** This Clause sets out the framework for the sharing of personal data between the Parties as controllers. Each Party acknowledges that one Party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

18.2 **Effect of non-compliance with UK Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation, and any material breach of the UK Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this agreement with immediate effect.

18.3 **Particular obligations relating to data sharing.** Each Party shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;

- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

18.4 **Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the UK Data Protection Legislation. In particular, each Party shall:

- (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other Party about the receipt of any data subject access request;
- (c) provide the other Party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Party wherever possible;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of any breach of the UK Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this Clause 18 and allow for audits by Customer's designated auditor; and
- (j) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the UK Data Protection Legislation.

18.5 **Indemnity.** Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

19. FREEDOM OF INFORMATION

19.1. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA

and EIRs;

- (b) transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

19.2. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

20. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 20.1. The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.
- 20.2. The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.
- 20.3. The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1. The Supplier shall retain ownership of all pre-existing Intellectual Property created by the Supplier or any Staff or Sub-Contractor of the Supplier exclusively for the purpose of performing the Services but expressly excluding the work output produced for the Customer which shall be deemed assigned to the Customer.
- 21.2. The Supplier hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Customer to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Customer provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement supplier or other third party invited by the Customer to participate in a tendering process for the award of a contract to deliver replacement services).
- 21.3. The Supplier shall indemnify the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

22. RECORDS AND AUDIT ACCESS

- 22.1. The Supplier shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the

Contracts entered into with the Customer and the amounts paid by the Customer.

- 22.2. The Supplier shall keep the records and accounts referred to in Clause 22.1 above in accordance with good accountancy practice.
- 22.3. The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 22.4. The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of 6 years after the expiry of the Contract Period to the Customer and the Auditor.
- 22.5. The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services, except insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 22.6. Subject to the Customer's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and
 - (c) access to Staff.
- 22.7. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 22, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

23. **REPLACEMENT OF CORRUPTED DATA**

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

CONTROL OF THE CONTRACT

24. **NOT USED**

25. **MONITORING OF CONTRACT PERFORMANCE**

The Supplier shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

26. **NOT USED**

27. **RIGHTS AND REMEDIES**

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

28. **TRANSFER AND SUB-CONTRACTING**

- 28.1. The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

28.2. The Authority's expectation is that the Supplier will provide the Services itself. The Supplier will, however, consider proposals from the Supplier for part of the Services to be performed by a sub-contractor provided that:

- (a) the sub-contractor and the terms of the sub-contractor's appointment between the Supplier and any sub-contractor are approved by the Authority; and
- (b) upon request from the Authority, the Supplier procures a collateral warranty (in a form approved by the Authority) from the proposed sub-contractor, for the benefit of the Authority in respect of the performance of the relevant parts of the Services.

28.3. Provided that the Customer has given prior written consent, the Supplier shall be entitled to novate the Contract following the novation of the Framework Agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of the Framework Agreement;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

28.4. The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

28.5. Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.

28.6. The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established by the crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or
- (c) any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

29. WAIVER

29.1. A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

29.2. A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

29.3. A party that waives a right or remedy provided under this Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

30. VARIATION

30.1. Subject to the provisions of this Clause 30, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

- 30.2. The Customer may request a Variation by completing and sending the Variation form attached at Annex B (the **Variation Form**) to the Supplier, giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 30.3. If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
- (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 30.4. If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

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

- 31.1. Except as expressly provided, a person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 31.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

32. **SEVERANCE**

- 32.1. If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 32.2. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

33. **LIABILITY, INDEMNITY AND INSURANCE**

- 33.1. Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) 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; or
 - (d) any other losses which cannot be excluded or limited by applicable law.

33.2. Subject to Clause 33.3, the Supplier shall indemnify and keep indemnified the Customer against losses that directly result from the Supplier's negligent performance of the Services. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

33.3. Subject always to Clause 33.1 and Clause 33.4:

(a) other than in respect of losses caused by the Supplier's wilful misconduct, the liability of the Supplier shall not exceed:

- (i) £100,000 in respect of any one claim or series of related claims; and
- (ii) £500,000 or 125% of the total Contract Price and all other amounts payable to the Supplier in respect of all claims in the preceding Contract Year, whichever is the greater; and

(b) The liability of the Customer(s) shall not exceed £25,000 in addition to its obligation to pay the Contract Price properly due and payable.

33.4. Subject to Clause 33.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); or
- (f) any indirect or consequential loss or damage.

33.5. The Customer may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Supplier's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and
- (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.

33.6. Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

33.7. The indemnities given at Clause 18.5 shall not be subject to the limitations of liability given under Clause 33.3.

34. INSURANCES

34.1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5 Million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5 Million.

Commented [B1]: This may be amended as agreed by the Hiring Manager and Customer in light of the type of hire undertaken

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

- 34.2. The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 34.3. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 34.4. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 34.5. The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

35. **TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

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

36. **WARRANTIES AND REPRESENTATIONS**

The Supplier warrants and represents that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (e) 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;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (h) 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;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and

trained Staff with all due skill, care and diligence.

DEFAULT, DISRUPTION AND TERMINATION

37. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

37.1. Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 37.1 (a) to Clause 37.1(h) (inclusive); or
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

37.2. The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Customer may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) 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 before the Change of Control.

38. TERMINATION ON DEFAULT

38.1. The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and if:

- (a) the Supplier has not remedied the material breach to the satisfaction of the Customer within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- (b) the material breach is not, in the opinion of the Customer, capable of remedy.

38.2. The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if:

- (a) the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- (c) any warranty given by the Supplier in Clause 36 of this Contract is found to be untrue or misleading.

38.3. If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within [90] Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 13.

39. TERMINATION FOR CONVENIENCE

The Customer may terminate this Contract at any time by giving 2 Months' written notice to the Supplier.

40. CONSEQUENCES OF TERMINATION OR EXPIRY

40.1. Where the Customer terminates the Contract under Clause 38 and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier 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 Clause 38, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

40.2. Subject to Clause 33, where the Customer terminates the Contract under Clause 39, the Customer shall indemnify the Supplier against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 39.

40.3. The Customer shall not be liable under Clause 40.2 to pay any sum that:

- (a) was claimable under insurance held by the Supplier, and the Supplier 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

- (b) when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated before the expiry of the Contract Period.

40.4. Except as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clause 18, Clause 19, Clause 20, Clause 21, Clause 25, Clause 27, Clause 30, Clause 34, Clause 40 and Clause 43.

41. **DISRUPTION**

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

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

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

41.4. If the Supplier's proposals referred to in Clause 41.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:

- (a) require the Supplier to provide alternative proposals; or
- (b) undertake the services itself and recover from the Supplier the additional costs incurred in the process.

Subject to Clause 41.5, nothing in this clause shall release the Supplier from the proper performance of its obligations under the Contract.

41.5. If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

42. **RECOVERY ON TERMINATION**

42.1. On the termination of the Contract for any reason, the Supplier shall:

- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Customer all Property (including materials, documents and information) provided to the Supplier. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

42.2. If the Supplier fails to comply with Clause 42.1(a) and Clause 42.1(b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

42.3. Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 42.1(c) and Clause 42.1(d) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

43. **DISPUTE RESOLUTION**

43.1. If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Authority and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of The Authority and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Authority and [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 7 days after the date of the ADR notice.

44. **FORCE MAJEURE**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

45. **ENTIRE AGREEMENT**

45.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 45.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract, provided that nothing in this Clause 45 shall operate to exclude any liability for fraud.
- 45.3. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract;
 - (b) the Order Form except Appendices 2 (Supplier's Tender) and 3 (Supplemental Tender) to the Order Form;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix 2 (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender);
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) Schedule 1, part 2 of the Framework Agreement and Appendix 2 to the Order Form (the Supplier's Tender), and Appendix 3 to the Order Form (Supplemental Tender).
- 45.4. This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

46. ANNOUNCEMENTS

The Authority reserves the right to publish the names of the suppliers appointed to the DPS and amounts of Order and the name of the successful supplier and to publish such other information regarding operation of the DPS and Orders as it may be required to publish in accordance with procurement regulations, which the Authority is required to comply with.

47. NOTICES

- 47.1. 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.
- 47.2. 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 fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 47.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax or e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.
- 47.3. For the purposes of Clause 47.2 the address of each Party shall be:
- (a) for the Customer: the address set out in the Order Form.
 - (b) for the Supplier: the address set out in the Order Form.
- 47.4. Either Party may change its address for service by serving a notice in accordance with this clause.

48. GOVERNING LAW AND JURISDICTION

- 48.1. This Contract and any dispute or claim arising out of or in connection with it or its subject

matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

48.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Authorised to sign for and on behalf of the Customer

Signature

Date

Name in capitals

Address
.....

Authorised to sign for and on behalf of the Supplier

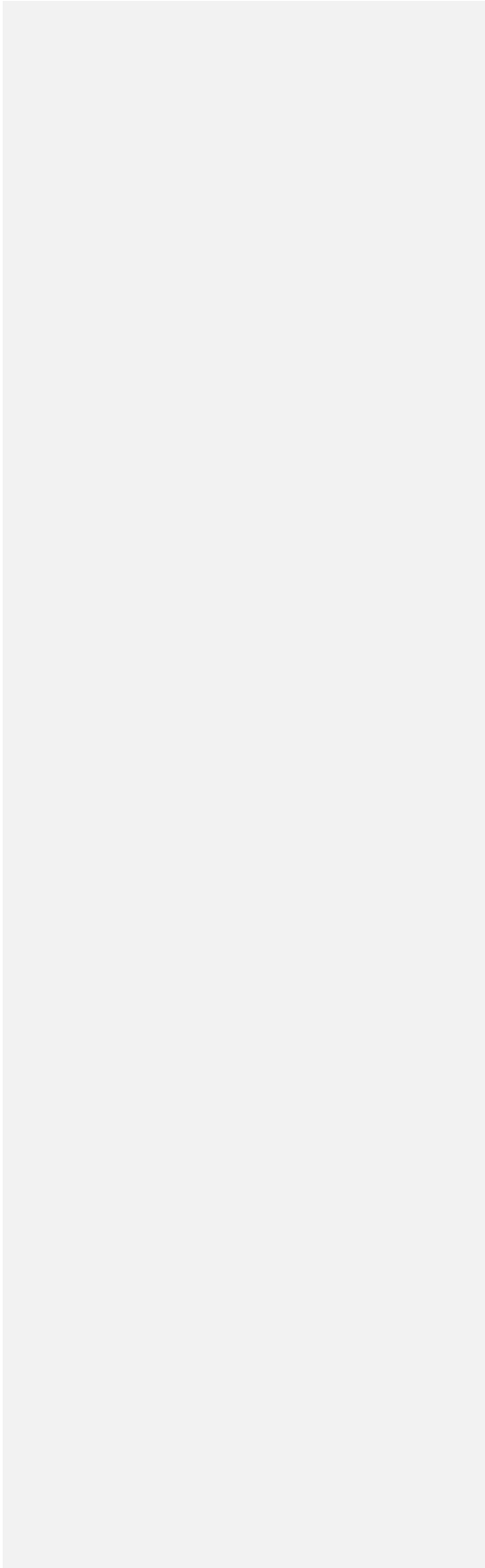
Signature

Date

Name in capitals

Address
.....

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



ANNEX A
COMPLETED ORDER FORM

Completed Order Form - to be agreed and confirmed by each Council based on their requirements

Agency Worker Request Form

<p>Hiring Managers are asked to fully complete all sections of this form, unless otherwise stated. Once completed the form should be sent, along with a Job Description / Candidate Specification and Supplier Response Form to all the email addresses provided for the relevant Category.</p>			
SECTION 1: Hiring Manager			
Hiring Manager Name		Phone No	
Work location		Email address	
SECTION 2: Details of requirement			
Job title and grade:		Required start date:	
Hours of work		Expected duration:	
Category you are accessing:		Interview required?	Choose an item.
Nature of work duties and reason for additional resources required:	Choose an item.	Driving licence required? (State any special requirements e.g. LGV, insurance checks etc)	Choose an item.
What skills and experience are required?		DVLA check required? (Crawley only)	Choose an item.
What documentary evidence of qualifications is required?		Categories D-I only Membership of a professional body (state which one/s)	
No. of years employment history required (NB Mole Valley DC requires 3 years min)		No. of employment references required (Max of 2 unless exceptional circumstances)	
Maximum no. of CVs for each Agency to provide		Confidentiality agreement signed?	Choose an item.
Does the candidate need to be DBS checked?	Choose an item.	Other comments / special requirements	
<p>The Agency will carry out the following checks on all candidates: Proof of eligibility to work in the UK in accordance with the Asylum and Immigration Act and provide a complete CV to the Hiring Manager.</p>			
SECTION 3: Pay information			
<p>Pay to candidate per hour (excl fees)* NB this is dependent on availability of staff for this rate and could be subject to negotiation with the Hiring Manager</p>			
<p>Booking guide: 1. Send to all Agencies on the particular category you are accessing along with a person/candidate specification and a job description/role profile.</p>			

**ANNEX B
VARIATION FORM
Variation Form**

Call-off terms and conditions for services

[NAME OF CATEGORY]
.....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[NAME OF CONTRACTING AUTHORITY] **(the Customer)**

and

[NAME OF SERVICE PROVIDER] **(the Supplier)**

1. The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE CONTRACT PRICE].
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Customer

Signature

Date

Name in capitals

Address

Authorised to sign for and on behalf of the Supplier

Signature

Date

Name in capitals

Address