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APPENDIX 1 – FEES FOR SERVICES

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1. **INTERPRETATION**

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

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| --- | --- |
| **“Additional Services”** | means additional services as may be requested by the Authority and/or the Customer. This may include but is not limited to payroll support and temporary staff being made permanent. Details of Additional Services are provided within the specification |
| **“AWR” and “Agency Worker Regulations”** | means the Agency Worker Regulations 2010 (as amended from time to time) |
| **“Applicant”** | means a person whose curriculum vitae (“CV”) is submitted to the Customer by the Provider for consideration for a Permanent Placement or Temporary Placement |
| "**Approval**" **and** "**Approved**" | means the written consent of the Customer not to be unreasonably withheld or delayed |
| **“Authority**" | means the Mayor and Burgesses of the London Borough of Waltham Forest |
| "**Audit**" | means an audit carried out pursuant to Clause 34 |
| "**Auditor**" | means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Customer |
| **“Base Location”** | means the location, specified by the Customer (in the Order Form) at which the majority of the Services shall be delivered |
| **"Basic Working and Employment Conditions"** | means those terms and conditions that are ordinarily included in the contracts of comparable employees or workers, as further defined by Regulation 5 of the AWR |
| **“Central Government Authority/Authorities”** | means the Crown and all bodies listed in Schedule 1 of the Public Contracts Regulations 2015 (whether or not they perform their functions on behalf of the Crown), but does not include Her Majesty in her private capacity |
| **“Change of Law”** | means any change to or introduction of any Law coming into force or having effect after the Effective Date (and which could not have reasonably been anticipate by the Provider prior to the Effective Date) which:  (i) relates specifically to the business or operations of the Customer only; or  (ii) relates specifically to the provision of the Contract Services  and which in either case, would require the Provider to incur demonstrable and material additional costs or expenses to enable it to continue providing the Contract Services in accordance with this Contract. |
|  |  |
| "**Commencement Date**" | means the date set out in the Order Form |
| "**Commercially Sensitive Information**" | means the Confidential Information listed in the Order Form comprised of information which is provided by the Provider and designated as commercially sensitive information by the Customer for the period set out in that Order Form |
| **“Conduct Regulations”** | shall mean the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended from time to time). |
| "**Confidential Information**" | means: -  (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party; and  (b) the Commercially Sensitive Information,  and does not include any information: -  (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 29 (Confidential Information);  (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;  (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or  (iv) is independently developed without access to the Confidential Information |
| "**Call-Off** **Contract**" | means the written agreement between the Customer and the Provider consisting of the Order Form and these clauses save that for the purposes of Clause Interpretation only, reference to the Call-Off Contract shall not include the Order Form |
| "**Contract Period**" | means the period from the Commencement Date to: -  (a) the date of expiry set out in Clause 2 (Initial Contract Period); or  (b) following an extension pursuant to Clause 3 (Extension of Initial Contract Period), the date of expiry of the extended period; or  (c) such earlier date of termination or partial termination of the Call-Off Contract in accordance with the Law or the provisions of the Call-Off Contract |
| "**Customer**" | means the Customer as identified in the Order Form |
| "**Crown**" | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular Authorities, persons, commissions or agencies from time to time carrying out functions on its behalf |
| **“Data Controller”** | has the meaning given to it in the Data Protection Legislation, as amended from time to time | |
| **“Data Loss Event”** | means any event that results, or may result, in unauthorised access to Personal Data under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data breach | |
| **“Data Processor”** | has the meaning given to it in the Data Protection Legislation, as amended from time to time | |
| **“Data Protection Legislation” or “DPA”** | means the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation | |
| **“Data Subject”** | has the meaning given to it in the Data Protection Legislation, as amended from time to time | |
| **“Data Subject Access Request”** | means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data | |
| "**Default**" | means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Call-Off Contract and in respect of which such Party is liable to the other |
| "**Deliverables**" | means those deliverables listed in the Order Form |
| **“Employee”** | shall mean an Applicant who has been retained by the Customer as a permanent employee |
| **“Environmental Information Regulations” or** "**EIR**" | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations |
| **“Extension Period”** | means such period or periods as may be specified by the Customer pursuant to Clause 3 |
| **“Fees”** | means the price (exclusive of any applicable VAT), payable to the Provider by the Customer under the Call-Off Contract for the full and proper performance by the Provider of the Services and its obligations under the Call-Off Contract, as set out in the Order Form and Appendix 1 of the Call-Off Contract |
| "**FOIA**" | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation |
| "**Force Majeure**" | means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: -  (a) any industrial action occurring within the Provider's or any Sub-Contractor's organisation; or  (b) the failure by any Sub-Contractor to perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);  (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; |
| "**Framework Agreement**" | means the framework agreement for the provision Services between the Authority and the Provider |
| "**Fraud**" | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Authority or the Customer |
| "**Good Industry Practice**" | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Customer engaged in a similar type of undertaking under the same or similar circumstances |
| **“Improvement Notice”** | means a notice issued on the Provider to improve minor defaults of the Framework Agreement, the Call-Off Contract or the Order Form instructing the Provider to improve or remedy any minor defaults in the provision of the Services |
| "**Information**" | has the meaning given under section 84 of the FOIA |
| "**Intellectual Property Rights**" **and** "**IPRs**"  **“Interim Worker”** | means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off  means highly skilled candidates who are experts within their field and are brought into a temporary position on a fixed term basis. Unlike Temporary Workers, they are usually brought in to manage a team or project with a view to make an immediate impact on the Customer organisation. Interim Workers would usually cover the roles within the Customer organisational structure, for example in absence of key staff |
| **"Invitation to Tender (ITT)**" | means the invitation to tender issued by the Authority on 12th March 2021 |
| "**Key Personnel**" | means any individual identified in the Order Form as being key personnel |
| "**Law**" | means:   1. any law, statute, bye-law, regulation, directives, delegated or subordinate legislation in force from time to time and within the meaning of section 21(1) of the Interpretation Act 1978, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements of any regulatory body with which the Service Provider is bound to comply; and 2. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement **(“EU References”)** which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018(as amended) and European Union (Withdrawal Agreement) Act 2020 and which shall be read on and after EU exit day as a reference to the EU References as modified by domestic law from time to time. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union |
| **“Material Default”** | means any breach of clauses 10 (Conflict of Interest), 22 (Prevention of Bribery and Corruption), 26 (Health and Safety), 27 (Data Protection Act), 28 (Freedom of Information Act and Environmental Information Regulations), 34 (Records and Audit Access), 34 (Transfer and Sub-Contracting), 45 (Warranties and Representations) |
| **“Minor Default”** | means any breach of the Call-Off Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default |
| "**Month**" | means calendar month |
| **"Order" and “Order Form”** | means the order for Services submitted to the Provider by any Customer in accordance with the Ordering Procedures |
| "**Parent Company**" | means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company, and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "**Holding Company**" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto |
| "**Party**" | means the Provider or the Customer |
| **“Permanent Placement”** | means a permanent position for an Applicant with a Customer |
| **“Placement”** | means a Permanent Placement and/or Temporary Placement, as appropriate |
| **“Personal Data”** | has the meaning given to it in the Data Protection Legislation as amended from time to time |
| "**Pre-Existing IPR**" | means any Intellectual Property Rights vested in or licensed to the Customer or the Provider prior to or independent of the performance by the Customer or the Provider of their obligations under the Call-Off Contract and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs |
| "**Premises**" | means the location where the Services are to be supplied, as set out in the Order Form |
| **“Processing”** | has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call-Off Contract, it shall include both manual and automatic processing and "**Process**" and "**Processed**" shall be interpreted accordingly |
| **“Prohibited Act”** | means any of the following acts, as described in the Bribery Act 2010:   * + - 1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority or another Customer a financial or other advantage to:          1. induce that person to perform improperly a relevant function or activity; or          2. reward that person for improper performance of a relevant function or activity;       2. 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 Call-Off Contract;       3. committing any offence:          1. under the Bribery Act;          2. under legislation creating offences concerning fraudulent acts;          3. at common law concerning fraudulent acts relating to this Call-Off Contract; or   defrauding, attempting to defraud or conspiring to defraud the Authority or any Customer |
| **“Provider”** | means the person, firm or company or organisation who executes this Call-Off Contract and includes any employee, agent, servant, Sub-Contractor or representative of the Provider or person employed by on or on behalf of the Provider to provide the Services. For the avoidance of doubt a Provider can be a managed service provider, recruitment outsourcing process provider, talent pool provider, vendor management provider or a recruitment provider but shall not include the Temporary Workers |
| **“Provider’s Contract Manager”** | means the person appointed by the Provider to manage the Call-Off Contract |
| "**Quality Standards**" | means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent Authority (and their successor Authorities), that a skilled and experienced operator in the same type of industry or business sector as the Provider 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 |
| "**Regulations**" | means the Public Contracts Regulations 2015 including any re-enactments |
| "**Replacement Provider**" | means any third-party Provider appointed by the Customer, to supply substantially similar Services, and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Call-Off 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) |
| **“Restricted Country”** | means any country which:   1. is outside the European Economic Area; 2. is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together “Restricted Countries”) as amended or replaced from time to time, including but not limited to the decisions made by the European Commission which may be accessed at <http://ec.europa.eu/justice/data-proctection/international-transfers/adequacy/index_en.htm>; and   has not been confirmed by the Customer as a non-Restricted Country in writing from time-to-time |
| "**Services**" | means the Services to be supplied as specified in the Order Form. For the avoidance of doubt where the Customer requires any services with a technology aspect, the definition of Services will include Technology Services |
| "**Staff**" | means all persons employed by the Provider to perform the Services together with the Provider's servants, agents, self-employed staff, personnel and Sub-Contractors used in the performance of its obligations under the Call-Off Contract (but excluding for the avoidance of doubt any Temporary Workers supplied to the Customer to perform work under the Customer’s direction, supervision or control) |
| **“Staff Vetting Procedures”** | means the Customers’ procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive of confidential nature or the handling of information which is subject to any relevant security measure |
| **“Sub-Contractor”** | means a company performing the Services or part of the Services on behalf of the Provider |
| **“Sub-Processor”** | means any third Party appointed to Process Personal Data on behalf of the Provider related to this Call-Off Contract |
| **“Technology Services”** | means any services provided by the Provider which contain a technology aspect, including the vendor management system or the talent pool technology |
| **“Temporary Placement”** | means a position for a Temporary Worker with a Customer |
| **“Temporary Worker”** | means any individual or an Applicant who has been selected by the Customer to provide services on a temporary basis, whether as an individual or via a limited company as a contractor or otherwise and who shall be supplied by the Provider to provide his/her services under temporary assignment to the Customer pursuant to this Call-Off Contract. For the avoidance of doubt, Temporary Workers shall be under the direction, supervision and control of the Customer but the Provider shall remain responsible for the overall management of the Temporary Worker. Temporary Workers shall not be considered to be “Staff” under this Call-Off Contract but the Provider shall at all times remain responsible for the contractual relationship with the Temporary Worker, including but not limited to termination of their contract |
| "**Tender**" | means the document(s) submitted by the Provider to the Customer in response to the Customer's invitation to Providers for formal offers to supply it with the Services |
| **“Term”** | means the period commencing on the Commencement Date and ending on **[CONTRACT END** **date]** or on earlier termination of this Call-Off Contract |
| "**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 or Sunday or public holiday in England and Wales |
| **“Year”** | means a calendar year |
|  |  |

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

* 1. Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  2. Words importing the masculine include the feminine and the neuter;
  3. The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
  4. References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  5. References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;
  6. Headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract;
  7. Reference to a clause is a reference to the whole of that clause unless stated otherwise;
  8. Reference to any employees of the Provider shall be deemed to include the Provider’s agents and Sub-Contractors unless expressly stated otherwise; and
  9. “Time” shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

1. **INITIAL CONTRACT PERIOD**
   1. The Call-Off Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Call-Off Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).
2. **EXTENSION OF INITIAL CONTRACT PERIOD**
   1. Subject to satisfactory performance of its obligations under the Call-Off Contract by the Provider during the Initial Contract Period, the Customer may, by giving written notice to the Provider not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Call-Off Contract for any further period specified in the Order Form. The provisions of the Call-Off Contract will apply throughout any such extended period.
3. **PROVIDERS STATUS**
   1. At all times during the Contract Period the Provider shall be an independent Provider and nothing in the Call-Off 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 Call-Off Contract.
4. PROVISION OF MANAGEMENT INFORMATION
   1. The Provider shall submit Management Information to the Customer in the format and frequency agreed by both Parties prior to the start of the Call-Off Contract.
   2. The Customer may make reasonable changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) Month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the Provider.
5. **Customer Obligations** 
   1. Save as otherwise expressly provided, the obligations of the Customer under the Call-Off Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Call-Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Call-Off Contract (howsoever arising) on the part of the Customer to the Provider.
   2. The Customer will endeavour to have their Order annotated with the relevant Call-Off Contract reference number, but this cannot be guaranteed on all Orders.
   3. The Customer shall respond to any reasonable request for information from the Provider.
   4. The Customer will assign an authorised representative who will liaise with the Provider’s Contract Manager, to ensure both parties use reasonable endeavours to meet their contractual obligations.
   5. The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).
6. **ENTIRE AGREEMENT**
   1. Subject to the provisions of the Framework Agreement relating to Call-Off Contracts, this Call-Off Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
   2. Each of the Parties acknowledge and agree that in entering into the Call-Off 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 Call-Off Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Call-Off Contract.
   3. Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
   4. In the event of and only to the extent of any conflict between the Order Form, the clauses of the Call-Off Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
      1. the Order Form
      2. the clauses of the Call-Off Contract; and
      3. any other document referred to in the clauses of the Call-Off Contract
   5. For the avoidance of doubt any terms that the Provider may seek to impose and which in any way vary or contradict these Call-Off Contract Order terms shall be excluded and not form part of the Order.
   6. The Call-Off Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.
7. **NOTICES**
   1. Except as otherwise expressly provided within the Call-Off Contract, no notice or other communication from one Party to the other shall have any validity under the Call-Off Contract unless made in writing by or on behalf of the Party sending the communication.
   2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
   3. For the purposes of Clause 8.2, the address of each Party shall be:
      1. For the Customer: the address set out in the Order Form.

* + 1. For the Provider: the address set out in the Framework Agreement.
  1. Either Party may change its address for service by serving a notice in accordance with this clause.

1. **MISTAKES IN INFORMATION**
   1. Subject to any inputs from the Customer, the Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Provider in connection with the supply of the Services (excluding for the avoidance of doubt any candidate CV’s) and shall pay the Customer any reasonable additional costs occasioned directly by any discrepancies, errors or omissions therein.
2. **CONFLICTS OF INTEREST**
   1. The Provider shall take appropriate steps to ensure that neither the 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 Provider and the duties owed to the Customer under the provisions of the Call-Off Contract.
   2. The Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
   3. A Provider may be considered to have a conflict of interest, if the Provider:
      * 1. Directly or indirectly controls, is controlled by or is under common control with another Provider;
        2. Receives or has received any direct or indirect subsidy from another Provider;
        3. Has the same legal representative as another Provider;
        4. Has a relationship with another Provider, directly or through common third parties, that puts it in a position to influence another Provider regarding the provision of Services under this Call-Off Contract;
        5. Has a close business or family relationship with an employee of a Customer involved in the tendering of this Call-Off Contract.
   4. The Customer reserves the right to terminate the Call-Off Contract immediately by giving notice in writing to the 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 Provider and the duties owed to the Customer under the provisions of the Call-Off Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
3. **PREVENTION OF FRAUD**
   1. The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
   2. The 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.
   3. If the Provider or its Staff commits any Fraud in relation to this or any other contract with the Authority or the Customer, the Customer may: -
      1. terminate the Call-Off Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
      2. recover in full from the Provider any other loss sustained by the Customer in consequence of any breach of this clause.
4. **SUPPLY OF THE SERVICES**
   1. The Provider shall supply the Services to the Customer in accordance with the provisions of the Call-Off Contract.
   2. The Provider shall:
      1. comply with all reasonable instructions given to the Provider and its Staff by the Customer in relation to the Services from time to time, including reasonable instructions to reschedule or alter the Services;
      2. immediately report to the Customer’s Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 10;
      3. co-operate with the Customer and the Customer’s other professional advisers in relation to the Services as required by the Customer;
      4. comply with the Customer’s internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Provider in writing by the Customer including where applicable, but not limited to, such policies, procedures, codes and practices listed in the Order Form.
   3. The Provider shall not:
      1. knowingly act at any time during the term of the Call-Off Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Call-Off Contract Services; or
      2. incur any expenditure which would result in any estimated figure for any element of the Call-Off Contract Services being exceeded without the Customer’s written agreement; or
      3. without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Call-Off Contract Services; or
      4. pledge the credit of the Customer in any way; or
      5. engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer;
      6. without the prior written consent of the Customer, introduce new methods or systems which materially impact on the provision of the Ordered Services
   4. Both Parties shall take all necessary measures to ensure the health and safety of the other Party’s employees, consultants and agents visiting their premises.
   5. The Provider accepts that the Customer shall have the right after consultation with the Provider to require the removal from involvement in the Call-Off Contract Services of any person engaged in the performance of the Call-Off Contract Services if in the Customer’s reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Call-Off Contract Services.
   6. Where the Provider is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Provider’s obligations under the Call-Off Contract.
   7. **Variation of Contract Services**
      1. The Customer may request a variation to the Services at any time provided that such variation does not amount to a material change to the Order.
      2. Any request by the Customer for a variation to the Services shall be by written notice to the Provider:
         1. giving sufficient information for the Provider to assess the extent of the variation and any additional costs that may be incurred; and
         2. specifying the timeframe within which the Provider must respond to the request, which shall be reasonable,
         3. and the Provider shall respond to such request within such timeframe.
      3. Any such variation agreed between the Customer and the Provider pursuant to Clause 37 shall not be valid unless in writing and signed by the Parties.
      4. Furthermore, any written and signed variation between the Parties shall be appended to the Order Form.
      5. In the event that the Provider and the Customer are unable to agree to a proposed variation including any change to the Contract Charges in connection with the requested variation to the Services:
         1. the Customer may agree that the Provider should continue to perform its obligations under the Call-Off Contract without the variation; or
         2. may terminate the Call-Off Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter;
         3. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
5. **THE SERVICES**
   1. **General**
      1. If the Provider is appointed by the Customer, the Provider shall provide the Services to the Customer in accordance with:
         1. the provisions of this Framework Agreement and each Call-Off Contract;
         2. the Customer’s Service requirements and the Order Form.
      2. The Provider shall perform the Services by the dates agreed in writing or if no date is agreed, in a timely manner to meet the reasonable requirements of the Customer.
      3. The Provider may be required to work alongside a technology specific provider or HR specific provider in order to satisfy the requirements of the Customer. In this situation, the Customer can select the technology or HR provider and will inform the Provider who this will be.
      4. The Provider shall ensure that it maintains sufficient skilled and experienced personnel to provide the Services in accordance with Good Industry Practice and in a timely fashion. In addition, the Provider shall ensure that its employees are adequately trained and understand the implications and duties of all relevant employment legislation and treat all Applicants in a professional and appropriate manner, and fairly and equally.
      5. The Customer may request the replacement of any of the Provider's staff at any time if in the reasonable opinion of the Customer, the performance of such person is unsatisfactory. The Provider agrees to promptly replace such staff as soon as reasonably practicable.
      6. The Provider agrees to co-operate with a Customer in respect of the transfer of information in respect of each Placement vacancy, to ensure that the Applicant is suitable for such vacancy and to comply with its obligations under the Conduct Regulations.
      7. The Provider shall always endeavour to ensure the suitability of an Applicant (including, without limitation, that each Applicant is skilled and competent with the appropriate qualifications, specialist knowledge and expertise for those tasks that they will be required to perform) and to maintain a high standard of service and integrity.
      8. The Provider will not submit an Applicant’s CV to a Customer for consideration in response to a specific Placement unless the Provider has previously met the Applicant, has expressed permission to submit their CV and screened the Applicant for fit with both the Customer’s culture and the job specification. The Applicant’s CV must, to the best of the Provider’s knowledge and belief be complete, accurate and up to date.
      9. The Provider shall not submit any Applicant’s CV to a Customer on a speculative basis, unless previously agreed with the Customer.
      10. The Provider shall fully brief all Applicants prior to the submission of their CV to a Customer.
      11. During the Term of the Agreement the Provider shall be obliged:
          1. to comply properly with the requirements of all relevant legislation and agreements relating to payment of value added tax, corporation taxes, income tax and other taxes and charges levied in respect of the Customer’s use of the Provider and the Fees payable to it under this Call-Off Contract and any tax liabilities in respect of Applicants and the Provider’s Staff (where applicable);
          2. to perform the checks to establish and confirm that each Applicant and each of the Provider’s Staff are entitled to live and work in the UK. Should any Applicant and / or Provider’s Staff cease to be entitled to live and work in the UK at any time during the term of a Placement to a Customer, or during the provision of the Additional Services to a Customer, the Provider shall immediately notify the Customer of this fact and the Customer will be entitled to immediately terminate any relevant agreement in respect of that Applicant and / or the Provider’s Staff; and
          3. to provide proof of an Applicant's qualifications, training and experience requested by the Customer or required by law or any professional body for the performance of the Placement and / or the Additional Services.
      12. The Provider shall use reasonable endeavours to procure that all the Provider’s Staff, Sub-Contractors and the Sub-Contractors Staff shall:
          1. attend such location as may be reasonably required for the proper provision of the Services;
          2. observe the Customer’s general rules and procedures with regard to the Placement including without limitation the Customer’s policies in respect of: IT. health and safety at work, security, smoking, dress code, attendance and Code of Conduct. The Provider’s Staff (as appropriate) will, on commencement of the Placement and / or the provision of the Additional Services (as appropriate), be given access to all of a Customer’s relevant policies and guidelines so that they know the rules and procedures, which need to be followed;
          3. notify the Customer so far as possible in advance of any periods over which they will be unable to attend the Placement and / or provide the Additional Services (as appropriate) due to the holiday, sickness, maternity leave, shared parental leave, paternity leave or other reason for non-attendance;
          4. act in a civil, co-operative and non-discriminatory fashion towards a Customer’s employees, clients and other business contacts; and
          5. acknowledge and agree that a Customer shall at all times have the right without thereby being in breach of this Agreement or the Call-Off Contract, to require the Provider to remove immediately from a Customer’s site any Staff and Temporary Workers engaged there on a Placement and / or any of the Provider’s Staff who are providing Additional Services.
      13. The Provider shall ensure that in putting forward an Applicant in response to a brief by a Customer, it adheres to the following:
          1. The Provider must regularly re-interview the Applicant through face-to-face meetings and in any case before the Applicant begins a job-specific search.
          2. If for clear logistical reasons (i.e. distances to travel), it is more difficult to meet the Applicant face to face, then a full and in-depth telephone interview must be conducted and every attempt to meet them face-to-face must be explored. If the Applicant has only been telephone interviewed the Provider must explain the reason for this to the hiring manager, together with reasons as to why the Provider thinks the Applicant is right for the role.
          3. The Applicant should be fully briefed (verbally or by email) and provide written consent to the Provider to send their details for the specific brief referencing the job reference number and job title.
      14. The Applicant’s CV must be complete, accurate and up to date. Each Applicant should verify the accuracy and be provided a copy of the version of their CV that is provided to the Customer prior to its submission to the Customer.
      15. The Applicant’s CV must be emailed to the relevant personnel at the Customer. The email shall be in the following format:
          1. full candidate name, role applied for and line manager written clearly in the email;
          2. the reasons why the Applicant is suitable for this specific brief in the text of the email; and
          3. subject to the requirements of the Customer, with the written consent from the Applicant to be put forward for the relevant Placement attached or appended either as an email or a scanned PDF document and accurately dated.
      16. The Provider must have a Sub-contractor management process in place and be able to evidence this process to the Authority and the Customer if requested. As a minimum the Provider must comply with the Invitation to Tender specification and must:
          1. look at the Sub-Contractors performance overall and look at feedback in relation to any Temporary Workers that were provided to the Customer;
          2. meet with their Sub-Contractors at least twice a year and for Sub-Contractors that are used frequently a minimum of four times a year. The outcomes of these meetings must be reported to the Customer on a quarterly basis;
          3. be able to provide reports to the Authority and the Customer regarding work within local communities;
          4. check that each of their Sub-Contractors are compliant with all applicable legislation and regulations;
          5. monitor all National Insurance (NI) Contributions, Agency Workers Regulations (AWR), Working Time Regulations (WTR), etc;
          6. ensure that the terms and conditions between the Provider and each of the Sub-Contractors are consistent;
          7. maintain a Sub-Contractor complaints policy and make sure that each Sub-Contractor is aware of the complaints policy. Information on any complaints received should be submitted to the Authority and/or the Customer every six months.
   2. **Temporary Workers – Specific Terms**
      1. The Provider shall be responsible for providing the Temporary Workers to the Customer as requested in the Order Form and in accordance with this Call-Off Contract, the Order Form and any implementation plan.
      2. Both Parties shall ensure at all times that the Temporary Agency Workers are treated fairly and equally whether they are the Provider’s Temporary Worker or a Sub-Contractor’s Temporary Worker. This includes but is not limited to being given equal opportunity to be put forward for or considered for a Placement if they have the relevant skills and experience.
      3. The Provider shall, and ensure that its Sub-Contractors shall, at all times follow the Customer’s requests and requirements in the Order Form and provide suitable Temporary Workers with relevant experience and skills set and as local to the Base Location mentioned in the Order Form. The Provider must perform checks to ensure that any Temporary Workers provided are appropriately qualified for the job role they are put forward for.
      4. The Provider should, if applicable to their company model, seek Temporary Workers from both its own portfolio of Temporary Workers and its Sub-Contractor’s portfolio of Temporary Workers to present to the Provider.
      5. The Provider must at all times ensure that their Sub-Contractors are given a fair opportunity to provide the Services requested by the Customer.
      6. The Customer agrees to verify (by signing) the Temporary Worker’s timesheet to confirm the number of hours/days of services provided by the Temporary Worker to the Customer each week during the term of the Temporary Placement.
      7. In the event that a Temporary Worker proves to be unsatisfactory and the Customer notifies the Provider within the [first] day of the commencement of the Temporary Placement that this is the case, no charge will be made in relation to the Provider Fee provided that the Temporary Worker completes no more than one [1] day of work at the site and is asked by the Customer to leave the site or Base Location at the earliest reasonable time. At the Customer’s request, the Provider will take immediate steps to source a replacement. The Provider will support the Customer in facilitating the removal of any Temporary Worker under this Clause.
      8. Each Temporary Placement is terminable by the Customer immediately by notice in writing to the Provider if the relevant Temporary Worker:
         1. has failed to work in accordance with the Customer's rules and regulations previously notified by the Customer to the Temporary Worker; or
         2. is guilty of misconduct; or
         3. fails to perform the services or Temporary Placement in a proper and effective manner; or
         4. becomes incapable of providing the services or Temporary Placement for any reason
      9. Unless otherwise agreed, the Customer shall be entitled to terminate any Temporary Placement upon written notice at any time and where reasonably practicable it shall give the Provider 1 week's prior written notice of the termination of a Temporary Placement. The Provider shall not be entitled to terminate a Temporary Placement during the term of the Placement for convenience, unless a notice period has been agreed in the Order Form for the relevant Temporary Worker. The Provider will procure that appropriate terms are in place with the Temporary Worker to ensure compliance with this term.
      10. The Provider shall be wholly responsible for the payment to Temporary Workers of all fees, monies, expenses, remuneration, or other benefits including but not limited to: statutory maternity pay, shared parental pay, paternity pay, statutory sick pay and holiday pay payable to Temporary Workers and for all taxes (which it is statutorily liable to pay), National Insurance contributions, social security or other contributions, which may be payable, relating thereto or as a result of the receipt of any monies paid or payable hereunder accruing on or after the commencement of the Term of this Agreement. The Provider shall indemnify and hold harmless the Authority and the Customer for all costs incurred by the Customer as a result of any failure by the Provider to pay any such remuneration, pay, taxation (which it is statutorily liable to pay) and any deductions required by law anywhere in the world.
      11. For the avoidance of doubt, Temporary Workers will be under the day to day supervision, direction and control of the Customer, however, the Provider warrants that it is wholly responsible for all obligations to Temporary Workers under the Pensions Act 2008, including but not limited to assessing whether or not the Temporary Worker is eligible to be auto-enrolled into a qualifying pension scheme, the duty to enrol and re-enrol Temporary Workers, to make the appropriate employer contributions and deduct the appropriate employee contributions as required by the Pensions Act 2008.
      12. The Provider shall use its reasonable endeavours to ensure that Temporary Workers co-operate with the Customer and co-operates with the Customer’s reasonable instructions. This includes but is not limited to as far as reasonably possible making sure that the Temporary Worker is aware that they must perform their duties in a competent manner, comply with the Customer’s policies at all times and act in a professional manner whilst representing both the Provider and the Customer.
      13. The Provider shall use all reasonable endeavours to ensure that all Temporary Workers provided to a Customer remain at all times the workers or contractors (as appropriate) of the Provider and do not become employees of the Authority and/or the Customer except where this occurs as a result of an act or omission of the Authority or the Customer, the Customer taking a Temporary Worker on as a permanent Employee or following the application of the TUPE Regulations.
      14. For the avoidance of doubt, Temporary Workers shall be under the direction, supervision and Control of the Customer during their completion of the Placement, although the Provider will remain at all times responsible for the contractual relationship with the Temporary Worker including but not limited to the termination of their contract. The Provider will be responsible for the overall management of any Temporary Worker including but not limited to dealing with any complaints or concerns raised in relation to the Temporary Worker. The Provider agrees to keep the Customer informed of all such matters and provide them with a reasonable opportunity to make any relevant representations.
      15. Both Parties shall ensure that the Temporary Workers are at all times insured under the relevant Parties own Employers Liability and Public Liability insurance policies whilst under the control, direction and instruction of each Party.
      16. The Provider shall accordingly indemnify and hold each the Authority and Customer harmless against all liabilities arising out of or in connection with clauses 13.2.10, 13.2.11 and 13.2.13.For the avoidance of doubt the Provider will not be liable to indemnify the Authority and the Customer for any liabilities as a result of any acts or omissions of the Customer.
      17. The Provider shall ensure that they and their Sub-Contractors obtain the consent of the Temporary Worker to hold Personal Data on them which can be shared with the Customer. All data must be held in accordance with Clause 27 and the Data Protection Act 2018. This data may include but is not limited to:
          1. Name of Temporary Worker;
          2. Date of Birth;
          3. Home address;
          4. National Insurance Number;
          5. Employment History;
          6. Training Records;
          7. Confirmation that qualification and certificates have been checked;
          8. Evidence of the Temporary Workers eligibility to work in the UK;
          9. Confirmation that the Temporary Workers Driving Licence has been checked, if applicable for the role;
          10. Confirmation that DBS has been carried out and checked;
          11. Confirmation that references have been checked.
      18. The Provider shall monitor all Temporary Worker Placement and notify the Customer when a Temporary Worker’s Placement is approaching 12 weeks in order for the Customer to review the Placement.
   3. **Temporary Workers – Drivers (if applicable)**
      1. The Provider is responsible for any checks deemed necessary to ascertain the suitability of the drivers to fulfil the Temporary Placement with the Customer (e.g. the holding and validity of driving licences and/or any permissions or authorizations required to drive certain categories of vehicles) before they are put forward to the Customer for consideration for the Temporary Placement.
      2. Any driver put forward by the Provider to the Customer is introduced on the understanding that they are deemed to be the employee of the Customer in relation to all purposes including the Transport Act 1968, Working Time Regulations 1998, and all other road transport, road traffic, driver’s hours, and health and safety legislation (“**Driving Laws**”).
      3. The Customer must ensure that the driver complies with all Driving Laws, including holding valid licenses where applicable and must take proper steps in relation to the insurance, maintenance and safety of vehicles and effect all other necessary liability insurances.
      4. The Customer shall assume control of the drivers’ duties, health and safety, employer’s obligations and liability, journeys and hours of work and all statutory duties including EU legislation in respect of driving licenses and tachographs.
      5. The Customer shall be responsible for all fines and penalties incurred by the drivers, including speeding and parking fines.
      6. The Customer must hold an operator's license where this is required.
      7. The Provider will provide the drivers with written statements containing full details of the terms and conditions of engagement which must be signed, and a copy returned to the Customer for their records.
      8. The Provider will pay the temporary driver's wages and account to HM Revenue & Customs and other government departments for all the necessary income tax and statutory deductions made.
   4. **Agency Worker Regulations** 
      1. Both Parties will ensure that they comply with all of their obligations under the AWR.
      2. The Customer will provide the information requested by the Provider in accordance with The Conduct of Employment Agencies and Employment Business Regulations 2003, this includes but is not limited to estimated commencement date, duration of the Placement, job role, experience required.
      3. Subject to a Customer providing the information requested by the Provider, it shall be the responsibility of the Provider to ensure that if the AWR applies to a Placement, the Temporary Worker receives the same Basic Working and Employment Conditions as the Temporary Worker would be entitled to, had such worker been recruited directly by the Customer. For the avoidance of doubt a Temporary Worker supplied via a limited company shall be treated as out of scope of AWR.
      4. The Customer must ensure that a Temporary Worker is treated no less favourably to a worker in a comparable permanent role with regards to the amenities and facilities provided by the Customer.
      5. The Provider:
         1. warrants and undertakes that it will not structure any Placements in a manner that prevents or attempts to prevent the Temporary Worker from being entitled to, or from continuing to be entitled to equivalent Basic Working and Employment Conditions or which is prohibited under the AWR; and
         2. shall notify the Customer in writing prior to the commencement of a Temporary Placement if the Temporary Worker has performed a Placement for the Customer within the previous 12 months.
      6. The Provider shall request from the Customer information, or details of where it can locate information regarding the relevant employment vacancies and the collective facilities and amenities provided by the Customer, prior to the commencement of a Temporary Placement. It shall be the obligation of the Provider to notify each Temporary Worker how to access this information, or if in the view of the Customer this is not practically possible, to provide the Temporary Worker with such information.
      7. The Customer will fulfil any request for information under this Clause 13 as soon as reasonably practicable.
      8. In the event that a Temporary Worker makes a written request to the Provider for information in accordance with the AWR, the Provider shall compile a written statement setting out in sufficient detail the information necessary to comply with Regulation 16(2) of the AWR. It shall present such written statement to the Customer and obtain their written approval prior to providing the written statement to the Temporary Worker. The Provider shall ensure that the Customer has no less than 5 (five) Working Days to review the draft written statement. If no response has been provided by the Customer following such time period, the Provider shall re-issue the draft written statement to the Customer. If no response is provided by the Customer within 2 (two) Working Days of the Provider re-issuing such draft statement, the Provider shall be entitled to submit the written statement to the Temporary Worker in order to comply with the 28-day time limit set out in Regulation 16 of the AWR.
      9. The Provider shall indemnify the Customer in full from and against any liabilities suffered or incurred by the Customer as a result of the Provider’s failure to comply with the AWR or in the event that a Temporary Worker is unfairly dismissed or subjected to any detriment by, or as a result of, any act or omission of the Provider. For the avoidance of doubt this clause will not apply where the Customer has failed to provide information requested by the Provider within a reasonable time or the information is inaccurate.
      10. The Provider will support the Customer in completing the IR35 checks where applicable.
   5. **Information Requests**
      1. The Provider agrees and acknowledges that if it requires information from the Customer in order to ensure compliance with the AWR, it shall submit all such information requests to the Customer in accordance with the provisions of this Clause 13.5.
      2. For a Temporary Placement that is scheduled to last for a period of twelve (12)) weeks or longer the Provider shall submit a questionnaire to the Customer within a reasonable time frame prior to the commencement of the Temporary Placement for completion by the Customer. Upon receipt of the completed questionnaire, the Provider shall be responsible for complying with the AWR.
      3. For a Placement that, at the commencement of such Placement is not anticipated to last for a period in excess of twelve (12) weeks, but at any time during the Placement the Provider is notified that the Placement will or may be extended beyond twelve (12) weeks or would subsequently meet the ‘qualifying period’ in the AWR, the following shall apply:
         1. The Provider shall submit the questionnaire to the Customer for completion no later than the commencement of week 8 of the applicable Temporary Placement, or if such period has already passed, no later than 48 hours following notification of such extension. Upon receipt of the completed questionnaire, the Provider shall be responsible for complying with the AWR.
         2. If at any stage during a Temporary Placement the Provider wishes to request additional information from the Customer in order to determine its rights or obligations under the AWR, it shall notify the Customer in writing.
   6. **Permanent Employees – Specific Terms**
      1. The Provider shall be responsible for providing the Applicants to the Customer as requested in the Order Form and in accordance with this Call-Off Contract, the Order Form and any Implementation Plan.
      2. The Customer shall provide the job specification to the Provider, who will then present candidates to the Customer within the timescales specified by the Customer in the Order Form.
      3. The Provider shall, and shall ensure that its Sub-Contractors shall, at all times follow the Customer’s requests and requirements in the Order Form and provide suitable Applicants with relevant experience and skills set. The Provider must perform checks to ensure that any Applicants provided are appropriately qualified for the job role they are put forward for.
      4. Pay rates will be provided to the Provider by the Customer and the Provider must discuss these with the Applicants.
      5. The Provider should, if applicable to their company model, seek Applicants from both its own portfolio of potential Applicants and its Sub-Contractor’s portfolio of potential Applicants to present to the Provider.
      6. The Provider must at all times ensure that their Sub-Contractors are given a fair opportunity to provide the Services requested by the Customer.
      7. The Provider shall ensure that they and their Sub-Contractors obtain the consent of the Applicant to hold Personal Data on them which can be shared with the Customer. All data must be held in accordance with Clause 27 and the Data Protection Act 2018. This data may include but is not limited to:
         1. Name of the Applicant;
         2. Date of Birth;
         3. Home address;
         4. National Insurance Number;
         5. Employment History;
         6. Training Records;
         7. Confirmation that qualification and certificates have been checked;
         8. Evidence of the Applicants eligibility to work in the UK;
         9. Confirmation that the Applicant’s Driving Licence has been checked, if applicable for the role;
         10. Confirmation that DBS has been carried out and checked;
         11. Confirmation that references have been checked.
      8. In the event that a Permanent Placement terminates (whether by expiry of notice or otherwise) within ten (10) weeks of the date of commencement of the Permanent Placement, and provided:
         1. The Customer notifies the Provider in writing of the termination of the Permanent Placement within fourteen (14) days of such termination; and
         2. the termination is not due to redundancy or the Employee’s ill health; and
         3. nothing has materially changed with regards to the Employee’s current or anticipated job role which would precipitate the Employee choosing to leave,

then the Provider shall endeavour to find a replacement at no extra cost to the Customer and, if a replacement cannot be found within a reasonable period of time as judged solely by the Customer, the Provider shall promptly refund a portion of the Fees paid by the Customer in respect of such Permanent Placement. The refund of the portion of the Fees due to the Customer shall be as per the refund scale in the Order Form.

* + 1. In the event that the Customer rejects an Applicant for a Permanent Placement, or the Applicant rejects an offer of a Permanent Placement, and the Applicant is subsequently engaged by the same Customer for the same job reference number, the Customer shall pay the agreed Fees in full. If the Customer subsequently engages an Applicant for a Permanent Placement with a different job reference number, then no Fees shall be payable to the Provider unless the Provider can provide evidence that the Applicant has been engaged for the subsequent role directly as a result of the original introduction and not for example from the Applicant applying directly for the new role themselves.
    2. Invoices submitted by the Provider to the Customer should be in arrears for the previous month and be submitted by a deadline advised to the Provider by the Customer.
  1. **Technology Services – specific terms (where applicable)**
     1. Without prejudice to Clause 13, in the event that the Provider supplies Technology Services to a Customer, the Provider shall use all reasonable endeavours to procure that all of the Provider’s Staff who are engaged in the provision of the Technology Services:
        1. Co-operate with the reasonable requests and instructions of the Customer in carrying out the Technology Services;
        2. Attend such location as may be reasonably required for the proper provision of or for training regarding the Technology Services;
        3. Have the necessary skills and competence and are properly trained with appropriate technical expertise in the provision of the Technology Services. This includes being able to provide comprehensive, thorough and accurate training to the Customer;
        4. Keeps confidential any and all Confidential Information of the Customer both during and following the termination of the Technology Services; and
        5. Call-Off Contract on adequate written terms with the Provider to ensure their full compliance with the relevant terms of this Call-Off Contract and the Framework Agreement.
     2. The Provider must:
        1. ensure that they maintain all appropriate licences and permissions required for the provision of the Technology Services and for the Customer to be able to use the Technology Services to their full potential;
        2. ensure that the system being provided is able to work in conjunction with any current systems the Customer has;
        3. ensure the system is able to be installed on both physical and/or virtual hardware and have a server and client application;
        4. ensure the system is able to support different levels of access and permissions as required by the Customer;
        5. support the transfer or conversion of any data to the new software;
        6. be responsible for installing and configuring the system and work with the Customer to ensure successful implementation;
        7. ensure that any updates that are released to any system being provided as part of the Technology Services are compatible with any current systems being supplied by the Provider and any existing programmes that the Provider has;
        8. inform the Customer of any updates to any system a minimum of three (3) months prior to the update being released;
        9. ensure minimal disruption to the Technology Services during the Contract Period;
        10. carry out regular testing to ensure that the Technology Services and systems are performing correctly. Any issues that are identified must be reported to the Customer as soon as reasonably practicable and an agreed resolution and timeframe agreed between the Parties;
        11. provide training as and when requested by the Customer, free of charge, in a variety of methods;
        12. provide a 24-hour support system to the Customer for any technical support;
        13. ensure that there are security systems in place;
        14. ensure that the system comply with the DPA.
  2. **Additional Services – specific terms**
     1. In addition to the Customer’s temporary recruitment requirement, the Customer is able to add on Additional Services that are within the requirements of the Framework Agreement, Call-Off Contract and Invitation to Tender documents. These may be outlined in the initial Order Form and then added at any point during the life of the Call-Off Contract.
     2. The Provider is able to use Sub-Contractors to deliver the Additional Services. It is the responsibility of the Provider to manage any Sub-Contractor in line with the Framework Agreement and Call-Off Contract.
     3. Without prejudice to Clause 13, in the event that the Provider supplies Additional Services to the Customer, the Provider shall use all reasonable endeavours to procure that all of the Provider’s Staff who are engaged in the provision of the Additional Services:
        1. Co-operate with the reasonable requests and instructions of the Customer in carrying out the Additional Services;
        2. Attend such location as may be reasonably required for the proper provision of the Additional Services;
        3. Have the necessary skills and competence and are properly trained and experienced in the provision of the Additional Services;
        4. Keeps confidential any and all Confidential Information of the Customer both during and following the termination of the Additional services; and
        5. Call-Off Contract on adequate written terms with the Provider to ensure their full compliance with the relevant terms of this Call-Off Contract and the Framework Agreement.
     4. The Provider shall use all reasonable endeavours to ensure that all of the Provider’s Staff engaged in providing the Additional Services to the Customer remain at all times the employees, workers or contractors (as appropriate) of the Provider and do not become employees or workers of the Authority or the Customer.
     5. Provision of the Additional Services is terminable by the Customer immediately by notice in writing to the Provider if any member of the Provider’s Staff:
        1. has failed to work in accordance with the Customer's rules and regulations previously notified by the Customer to the Provider; or
        2. is guilty of misconduct; or
        3. fails to perform the Additional Services in a proper and effective manner.
     6. Unless otherwise agreed in the Order Form, the Customer shall be entitled to terminate the Additional Services upon one (1) week's prior written notice at any time of the termination of the Additional Services.
     7. The Provider shall be wholly responsible for the payment to the Provider’s Staff of all fees, monies, expenses, remuneration, or other benefits including but not limited to: statutory maternity pay, shared parental pay, paternity pay, statutory sick pay and holiday pay and for all taxes (which it is statutorily liable to pay), National Insurance contributions, social security or other contributions, which may be payable, relating thereto or as a result of the receipt of any monies paid or payable hereunder accruing on or after the commencement of the Term of this Agreement.
     8. For the avoidance of doubt, the Provider will remain at all times responsible for the overall management of the Provider’s Staff who are providing the Additional Services to the Customer, including but not limited to any disciplinary or grievance matters. The Provider agrees to keep the Customer informed of all such matters and provide them with a reasonable opportunity to make any relevant representations.
     9. The Provider shall indemnify and hold the Authority and the Customer harmless against all liabilities arising out of or in connection with clauses 13.8.3(e) and 13.8.7.
  3. **Temporary to Permanent Transfers & Fees**
     1. The Customer may offer a permanent Employee position to a Temporary Worker at any time during or following the completion of a Placement. There will be no Fee charged to the Customer in the event that the individual concerned has worked for more than twelve (12) weeks (whether continuous or not) in any twelve (12) Month period with the Customer.
     2. Where the Temporary Worker applies for a role which is either advertised internally or externally by the Customer and a fair and open recruitment campaign is completed by the Customer, the Provider will not be entitled to receive any transfer or introduction fee from the Customer.
     3. The Provider shall ensure that all Sub-Contractors work in line with Clauses 13.9.1 and 13.9.2 and do not charge any fees in addition to these Clauses relating to temporary to permanent transfers.
     4. The Customer may offer a permanent Employee position to an Interim Worker at any time during or following the completion of a Placement. There will be no introduction fee charged or any other additional charges charged to the Customer in the event that the individual concerned has worked for more than twelve (12) weeks (whether continuous or not) in any twelve (12) Months period with the Customer.
  4. **Dispute Resolution**
     1. Without prejudice to Clause 56 of this Call-Off Contract, in the event of a dispute between Providers concerning an Applicant’s representation, the Provider who first submitted the Applicant’s CV to the Customer for the specific Placement in question, will have ownership over the Applicant on the assumption the Provider had the express permission of the Applicant to submit their CV at the time.
  5. **Provider Non-Solicitation**
     1. The Provider (on behalf of itself and its employees) undertakes that during the period of this Agreement and for six months after termination, it will:

##### not canvass nor solicit for direct or indirect employment any personnel including Employees of a Customer; and

##### not solicit or encourage a Customer’s personnel including Employees to leave its employ, nor recommend its personnel to any third party that might result in an approach to personnel to leave.

* + 1. The Provider (on behalf of itself and its employees) undertakes that during any Temporary Placement, it will:

##### not canvass nor solicit for direct or indirect employment the Temporary Worker undertaking the Temporary Placement; and

##### not solicit or encourage a Temporary Worker during the completion of their Temporary Placement to leave its employ, nor recommend them to any third party that might result in an approach to the Temporary Worker to leave.

* + 1. The Provider acknowledges and agrees that no fee shall be payable should the Provider introduce a current employee of the Customer to one of its group companies. The Provider undertakes that it shall immediately inform the Customer in the event that one of its employee’s passes details of another group company’s Employee or Temporary Worker to the Provider.
    2. In the event a Customer Employee approaches the Provider either directly or in response to an advertisement, the Provider is free to work with that employee provided they keep written evidence from the employee that they initiated the approach.
    3. Subject to Clause 13.11.4, for the duration of the Call-Off Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent. For the avoidance of doubt, nothing in this clause is intended to restrict the Provider from advertising vacancies to the general public and dealing with any employee of the Customer who responds to such advertisements or who first contacts the Provider on his or her own initiative.
    4. Notwithstanding any terms to the contrary in this clause 13.11 the Provider shall not be restricted in respect of any Customer Employee who responds to an advertisement placed by the Provider or approaches the Provider to register for work finding services without having been previously approached directly by the Provider or posts their details in the public domain such as professional networking sites.
  1. **Refund Scale for Permanent Employees Fees**
     1. Where the Interim Worker applies for a role which is either advertised internally or externally by the Customer the Provider shall not be entitled to receive any transfer or introduction fee from the Customer. When the Provider is a managing agency, the Provider will ensure that the agency makes such charges relating to temp to perm.
     2. Should a permanent Employee leave the Customer’s employment within the first ten (10) weeks of permanent employment then the Provider shall on a sliding scale refund the placement Fee to the Customer as set out in paragraph 4.3 of the Order Form.
     3. Further to clause 13.2.2, should a permanent Employee leave the Customer’s employment within the first ten (10) weeks of permanent employment then the Provider shall be responsible in finding a suitable replacement.

1. **MANNER OF PROVIDING SERVICES**
   1. The Provider shall at all times comply with the relevant legislation, codes of conduct and regulations governing the provision of Services.
   2. Where applicable the Provider shall maintain and shall ensure that any Staff utilised in the provision of the Services maintain accreditation and certification with the relevant authorised body. To the extent that the standard of Services has not been specified in the Call-Off Contract the Provider shall agree the relevant standard of the Services with the Customer prior to the provision of the Services, and in any event the Provider shall perform its obligations under the Call-Off Contract in accordance with the Law, Good Industry Practice and any relevant regulations or Law.
   3. The Provider shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper provision of the Services.
   4. The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation Authority.
2. **CONTRACT PERFORMANCE**
   1. In supplying the Services, the Provider shall perform its obligations under the Call-Off Contract:
      1. with appropriately experienced, accredited, qualified and trained Staff with all due care and attention; and
      2. in a timely manner.
   2. The Provider shall ensure that:
      1. the Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement or any sample Approved by the Customer;
      2. the Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;
      3. the Services conform in all respects with all applicable Laws; and
      4. the Services are free from defects in design and workmanship and are fit for purpose for which such Services are ordinarily used and for any particular purpose made known to the Provider by the Customer.
   3. The Provider shall discharge its obligations hereunder with all due skill, care and diligence including Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.
3. **KEY PERSONNEL**
   1. The Parties have agreed to the appointment of the Key Personnel. The Provider shall inform the Customer within ten (10) Working Days or as soon as reasonably possible of any changes to their Key Personnel and shall ensure that a meeting is arranged between the Parties to establish a good working relationship with the new member or Key Personnel. The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The 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 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.
   2. The Customer may also require the Provider to remove any Key Personnel that the Customer, acting reasonably at all times, considers in any respect unsatisfactory. The Customer shall not be liable for the cost of removing and/or replacing any Key Personnel.
4. **PROVIDER’S STAFF**
   1. The Customer may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises: -
      1. any member of the Staff; or
      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.

* 1. At the Customer's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Call-Off Contract to the Premises, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Customer may reasonably request.
  2. The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
  3. If the Provider fails to comply with Clause 17.2 within two (2) Months of the date of the request, the Customer may terminate the Call-Off 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.
  4. The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Provider has failed to comply with Clause 17.2 shall be final and conclusive.
  5. The Provider shall comply with the Staff Vetting Procedures in respect of all Provider Staff employed or engaged by the Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

**PAYMENT AND CALL-OFF CONTRACT FEES**

1. **CALL-OFF CONTRACT FEES**
   1. In consideration of the Provider's performance of its obligations under the Call-Off Contract, the Customer shall pay the Fees in accordance with Clause 19 (Payment and VAT).
   2. The Customer shall, in addition to the Fees and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
   3. In relation to the Call-Off Contract only, in the event that statutory changes, or the application of enhanced statutory rights (including but not limited to pension increases), have the effect of increasing the direct costs of providing the Services or remunerating the Temporary Workers, the Provider shall be entitled to approach the Customer for approval to make corresponding adjustments to the Call-Off Contract Fees for the purpose of reflecting the effect of such changes.
   4. Unless otherwise expressly stated in the Framework Agreement, the Call-Off Contract or the Order Form, no claim by the Provider will be allowed for any addition to the Fees on the grounds of any matter relating to any document forming part of the Framework Agreement, the Call-Off Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Customer or any other appropriate means.
2. **PAYMENT AND VAT**
   1. The Customer shall pay all sums due to the Provider in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile set out in the Order Form.
   2. The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and any disbursements and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
   3. The Provider shall ensure that all invoices submitted to the Customer for Services are exclusive of the Retrospective Payment payable to the Authority in respect of the Services. The Provider shall not be entitled to increase the charges by an amount equal to the Retrospective Payment or to recover such Retrospective Payment as a surcharge or disbursement.
   4. Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Call-Off Contract, 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 Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days of a valid undisputed invoice, as defined by the sub-contract requirements.
   5. The Provider shall add VAT to the Fees at the prevailing rate as applicable.
   6. The Provider shall indemnify the Authority and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority and/or the Customer at any time in respect of the Provider’s failure to account for or to pay any VAT relating to payments made to the Provider under the Call-Off Contract. Any amounts due under this Clause 19.6 shall be paid by the 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.
   7. The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Call-Off Contract under Clause 47 (Termination) for failure to pay undisputed sums of money.
3. **SET OFF**
   1. The Provider shall not be entitled to retain or set-off any amount due to the Customer by it, but the Customer may retain or set-off any amount owed to it by the Provider under this Call-Off Contract which has fallen due and payable against any amount due to the Provider under this Call-Off Contract.
   2. If the payment or deduction of any amount referred to in Clause 20.1 is disputed, then any undisputed element of that amount shall be paid, and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.
4. **RECOVERY OF SUMS DUE**
   1. Wherever under the Call-Off Contract any undisputed sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Customer in respect of any breach of the Call-Off Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Call-Off Contract or under any other agreement or contract with the Customer.
   2. Any overpayment by either Party, whether of the Fees 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.
   3. The 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 Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Provider.
   4. All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off 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**

1. **PREVENTION OF BRIBERY AND CORRUPTION**
   1. The Provider:
      1. has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Call-Off Contract;
      2. has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010;
      3. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this Call-Off Contract, or any other contract with the Authority or the Customer, excluding any arrangements of which full details have been disclosed in writing to the Authority and/or the Customer prior to the execution of this Call-Off Contract.
   2. The Provider will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Provider arising as a result.
   3. The Provider will provide to the Customer certification (if requested to do so), in writing in such form as may be provided by the Customer, to be signed by an officer of the Provider, of the compliance with this Clause 22 by:
      1. the Provider; and
      2. all persons associated with the Provider; and
      3. any other persons who are supplying Services in connection with this Call-Off Contract.
   4. Certification (if requested) will be provided by the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by the Customer.
   5. The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the Provider where appropriate.
   6. Should the Provider become aware of or suspect any breach of Clause 22.1 it will notify the Customer immediately.
   7. Following notification under Clause 22.6 the Provider will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Provider’s obligations under this Clause 22.7 shall survive the expiry or termination of this Call-Off Contract for a further period of six (6) years.
   8. The Customer may recover in full from the Provider and the Provider shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 22 (Prevention of Bribery and Corruption), whether or not the Call-Off Contract has been terminated.
   9. The Customer may terminate this Call-Off Contract and any Order immediately upon serving written notice if the Provider or its Staff whether or not acting with the Provider’s knowledge, breaches Clause 22. Before exercising its right of termination under this Clause 22.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
      1. the Provider or a senior officer of the Provider; or
      2. a member of Staff who is not acting independently of the Provider. The expression ‘not acting independently of’ (when used in relation to the Provider or its Staff) means and shall be construed as acting;
         1. with the authority of; or
         2. with the actual knowledge; of any one or more of the Provider’s or Staff (as applicable) directors or partners or
         3. in circumstances where any one or more of the directors (or partners) of the Provider or its Staff (as applicable) ought reasonably to have had knowledge.
   10. Any notice of termination by the Customer under Clause 22.9 must specify:
       1. The nature of the Prohibited Act; and
       2. The identity of the person whom the Customer believes has committed the Prohibited Act; and
       3. The date on which the Call-Off Contract will terminate
   11. In the event of any breach of Clause 22 the Customer is entitled to recover from the Provider the value of any gift, consideration or commission.
   12. Notwithstanding Clause 56 (Dispute Resolution) any dispute relating to:
       1. the interpretation of this Clause 22 or
       2. the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Customer and its decision shall be final and conclusive
   13. Termination under Clause 22.9 will:
       1. be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Call-Off Contract;
       2. prohibit the Provider from claiming any damages for early termination;
       3. allow the Customer to recover from the Provider the amount of any loss suffered by the Customer resulting from the termination; and
       4. entitle the Customer to be indemnified by the Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Services from another party.
2. **DISCRIMINATION**
   1. The Provider 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).
   2. The Provider shall take all reasonable steps to secure the observance of Clause 23.1 by all its Staff and servants, employees, or agents of the Provider employed in the execution of the Call-Off Contract.
3. **THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999**
   1. A person who is not a Party to the Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.
4. **ENVIRONMENTAL REQUIREMENTS**
   1. The Provider shall, when working on the Premises, perform its obligations under the Call-Off 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.
5. **HEALTH AND SAFETY**
   1. The 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 Call-Off Contract. The Customer shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of its obligations under the Call-Off Contract.
   2. While on the Premises, the Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
   3. The Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
   4. The 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 Services under the Call-Off Contract.
   5. The 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.

**PROTECTION OF INFORMATION**

1. **DATA PROTECTION**
   1. Where any Personal Data is Processed in connection with the exercise of the Parties’ rights and obligations under this Call-Off Contract, the Parties acknowledge that both Parties may be the Data Controller or the Data Processor.
   2. Both Parties shall:
      * 1. process the Personal Data in order to perform its obligations under this Call-Off Contract;
        2. ensure that at all times they have in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
        3. not disclose or transfer the Personal Data to any third party or staff unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the other Party (save where such disclosure or transfer is specifically authorised under this Call-Off Contract or is specifically required in order for the parties to perform their obligations under this Call-Off Contract);
        4. take reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that the staff:
           1. are aware of and comply with the Call-Off Contract;
           2. 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 Data Controller or as otherwise permitted by this Call-Off Contract; and
           3. have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
        5. notify each other immediately if it becomes aware of an event that results, or may result, in unauthorised access to Personal Data held by it under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data breach, or if it receives:
           1. from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to its obligations under the DPA;
           2. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
           3. 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;
        6. provide each other with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made including by promptly providing:
           1. each other with full details and copies of the complaint, communication or request;
           2. where applicable, such assistance as is reasonably requested to enable each Party to comply with the Data Subject Access Requests within the relevant timescales set out in the DPA; and
           3. the other, on request, with any Personal Data it holds in relation to a Data Subject; and
        7. if requested provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 27 and provide copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
   3. The Parties shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, either Party or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:
      * 1. the Party making the request shall propose a Variation to the other which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
        2. the requesting Party shall set out in its proposal to the other for a Variation details of the following:
           1. the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
           2. the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
           3. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
           4. how the Data Processor will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Data Controllers compliance with the DPA;
        3. in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
        4. the Parties shall comply with such other instructions and shall carry out such other actions required to comply with Data Protection Legislation, including:
           1. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call-Off Contract or a separate data processing agreement between the Parties; and
           2. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

a direct data processing agreement with the Data Controller on such terms as may be required by them; or

a data processing agreement with the Data Processor on terms which are equivalent to those agreed between the Data Controller and the Sub-Contractor relating to the relevant Personal Data transfer, and

* + - * 1. in each case which the Parties acknowledge may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.
  1. Both Parties shall use reasonable endeavours to assist the other to comply with any obligations under the DPA and shall not perform its obligations under this Call-Off Contract in such a way as to cause the other to breach any of their obligations under the DPA to the extent that it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

* 1. Both Parties shall designate a data protection officer if required by the Data Protection Legislation.
  2. Before allowing any Sub-Processor to process any Personal Data related to this Call-Off Contract, the Data Processor shall:
     + 1. notify the Data Controller in writing of the intended Sub-Processor and processing;
       2. obtain the written consent of the Data Controller;
       3. enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 27 such that they apply to the Sub-Processor; and provide the Data Controller with such information regarding the Sub-Processor as they may reasonably require.
  3. The Data Processor shall remain fully liable for all acts or omissions of any Sub-Processor.

1. **FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**
   1. The Provider acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations.
   2. The Provider shall and shall procure that its Staff shall:
      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;
      2. provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer’s request; and
      3. provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.
   3. The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Call-Off Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
   4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.
   5. The Provider acknowledges that (notwithstanding the provisions of Clause 28.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the EIR to disclose information concerning the Provider of the Services:
      1. in certain circumstances without consulting the Provider; or
      2. following consultation with the Provider and having taken their views into account;
      3. provided always that where Clause 28.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.
   6. The Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
   7. The Provider acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 28.5.
2. **OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989** 
   1. The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. Section 182 of the Finance Act 1989.
   2. In the event that the Supplier or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Call-Off Contract by giving notice in writing to the Supplier.
3. **CONFIDENTIAL INFORMATION**
   1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Call-Off Contract, each Party shall:
      1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
      2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
   2. Clause 30.1 shall not apply to the extent that:
      1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 28 (Freedom of Information);
      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;
      3. such information was obtained from a third party without obligation of confidentiality;
      4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; or
      5. it is independently developed without access to the other party's Confidential Information.
   3. The Provider may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
   4. The Provider shall not, and shall procure that its Staff do not, use any of the Customer’s Confidential Information received otherwise than for the purposes of this Call-Off Contract.
   5. At the written request of the Customer, the Provider shall procure that those members of the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Call-Off Contract.
   6. Nothing in this Call-Off Contract shall prevent the Customer from disclosing the Provider's Confidential Information:
      1. to any Crown Body or any other Customer. All Crown Bodies or Customers receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other 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 Crown Body or any Customer;
      2. to any consultant or other person engaged by the Customer or any person conducting a gateway review provided that the Customer shall ensure that any such third party shall not be a competitor and shall be subject to confidentiality obligations in respect of the Provider’s Confidential Information and that the disclosure of such Confidential Information shall not result in the Provider being placed at a competitive disadvantage;
      3. for the purpose of the examination and certification of the Customer's accounts;
      4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law, making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.
   7. The Customer shall use all reasonable endeavours to ensure that any government department, Customer, employee, third party or Sub-Contractor to whom the Providers Confidential Information is disclosed pursuant to Clause 30.6 is made aware of the Customer's obligations of confidentiality and maintains the confidentiality of the same.
   8. Nothing in this Clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Call-Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
   9. The Provider shall not without the prior written consent of the Customer divulge the existence of the Call-Off Contract or any Order or disclose any information relating to or contained in the Call-Off Contract to any person who is not engaged in the performance of the Call-Off Contract.
   10. In the event that the Provider fails to comply with this Clause 30 the Customer reserves the right to terminate the Call-Off Contract by notice in writing with immediate effect.
   11. The provisions of this Clause 30 shall apply notwithstanding termination of the Call-Off Contract.
4. **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**
   1. The Provider shall not make any press announcements or publicise the Call-Off Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 31.
   2. The Customer shall be entitled to publicise the Call-Off Contract in accordance with any legal obligation upon the Customer, including any examination of the Call-Off Contract by the Auditor.
   3. The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.
5. **SECURITY**
   1. The Customer shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The Providers shall comply with all reasonable security requirements of the Customer while on the premises and shall ensure that all Staff comply with such requirements.
   2. The Customer shall provide to the Provider upon request copies of its written security procedures and shall afford the Provider upon request an opportunity to inspect its physical security arrangements.
6. **INTELLECTUAL PROPERTY RIGHTS**
   1. Save as granted elsewhere under the Call-Off Contract, neither the Customer nor the Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
   2. The Parties shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Call-Off Contract) without prior Approval, use or disclose any of the other Parties Pre-Existing IPR to any third party.
   3. The Parties shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Call-Off Contract.
   4. Each Party hereby grants to the other Party a non-exclusive, revocable, non-assignable licence to use the other Party’s IPR during the Contract Period for the sole purpose of enabling the Provider to supply the Services and/or supply the Deliverables.
   5. For any Intellectual Property that is created by the Staff, Temporary Workers or Permanent Employees during the Contract Period and whilst providing the Services or in the course of their employment at the Customer, the Intellectual Property Rights will be transferred to the Customer.
   6. Prior to using any third-party Intellectual Property Rights, the Provider shall ensure that they have all necessary third-party licences to enable them to use the third-party Intellectual Property Rights to carry out its obligations under the Call-Off Contract.
   7. The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
      1. items or materials based upon designs supplied by the Customer; or
      2. the use of data supplied by the Customer which is not required to be verified by the Provider under any provision of the Call-Off Contract.
   8. The Customer shall notify the Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:
      1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
      2. shall take due and proper account of the interests of the Customer; and
      3. shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
   9. If a Claim is made in connection with the Call-Off Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to: -
      1. modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
      2. procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement,
   10. In the event that the Provider is unable to comply with Clauses 33.9.1 or 33.9.2 within twenty (20) Working Days of receipt of the Provider's notification the Customer may terminate the Call-Off Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Customer with all monies paid in advance in respect of the Services or Deliverables not delivered up to the date of termination, that is subject to the Claim.
   11. In the event that a modification or substitution in accordance with Clause 33.9.1 is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with Clause 33.9.2 the Customer shall be entitled to delete the relevant Service from the Call-Off Contract and/or terminate the Call-Off Contract with immediate effect.
   12. This Clause 33 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.
7. **RECORDS AND AUDIT ACCESS**
   1. The Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Call-Off Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Call-Off Contract including, the Services supplied under it, the Call-Off Contracts entered into with each individual Customer and the amounts paid by each Customer.
   2. The Provider shall keep the records and accounts referred to in Clause 34.1 above in accordance with good accountancy practice.
   3. The Provider shall afford the relevant Customer and/or the Auditor access to such records and accounts relating to the operation of this Call-Off Contract as may be required from time to time upon reasonable notice and subject to reasonable confidentiality undertakings.
   4. The Provider shall on request provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer, the Customer’s representatives and/or the Auditor as may be required from time to time.
   5. The Customer shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Provider or delay the provision or supply of Services save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer. The Customer will use reasonable endeavours to ensure that all audits are carried out during normal business hours (Monday to Friday, 9-5) and on reasonable notice.
   6. Subject to the Customer's rights of Confidential Information, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including: -
      1. all information requested by the Customer within the scope of the audit;
      2. reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
      3. access to the Staff.
   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 34, unless the audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

**CONTROL OF THE CONTRACT**

1. **TRANSFER AND SUB-CONTRACTING**
   1. The Provider shall not assign, novate, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without prior Approval. Sub-contracting any part of the Call-Off Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Call-Off Contract.
   2. The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they were the actions and/or omissions of its own Staff but for the avoidance of doubt the Provider shall not be responsible for the acts and omissions of Temporary Workers while they are engaged on a Placement.
   3. 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 Provider to the Customer as soon as reasonably practicable.
   4. Subject to Clause 35.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
      1. any Customer; or
      2. any other Authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
      3. any private sector Authority which substantially performs the functions of the Customer,

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

* 1. Any change in the legal status of the Customer such that it ceases to be a Customer shall not, subject to Clause 35.6, affect the validity of the Call-Off Contract. In such circumstances, the Call-Off Contract shall bind and inure to the benefit of any successor Authority to the Customer.
  2. If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 35.4 to a Authority which is not a Customer or if there is a change in the legal status of the Customer such that it ceases to be a Customer (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):
     1. the rights of termination of the Customer in Clause 47 shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
     2. the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof with the previous consent in writing of the Provider.
  3. The Customer may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Call-Off Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Call-Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
  4. Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Call-Off Contract.
  5. The Provider must have a Sub-Contractor management process in place and be able to evidence this process to the Customer if requested. As a minimum the Provider must comply with the Invitation to Tender specification and must:
     1. look at the Sub-Contractor’s performance overall and look at feedback in relation to any Temporary Workers that were provided to a Customer;
     2. meet with their Sub-Contractors at least twice a year and for Sub-Contractors that are used frequently a minimum of four times a year. The outcomes of these meetings must be reported to the Customer on a quarterly basis;
     3. be able to provide reports to the Customer regarding work within local communities;
     4. check that each of their Sub-Contractors are compliant with all applicable legislation and regulations;
     5. monitor all National Insurance (NI) Contributions, Agency Workers Regulations (AWR), Working Time Regulations (WTR), etc;
     6. ensure that the terms and conditions between the Provider and each of the Sub-Contractors are consistent;
     7. maintain a Sub-Contractor complaints policy and make sure that each Sub-Contractor is aware of the complaints policy. Information on any complaints received should be submitted to the Authority and the Customer every six months.

1. **WAIVER**
   1. The failure of either Party to insist upon strict performance of any provision of the Call-Off 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 Call-Off Contract.
   2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8 (Notices).
   3. A waiver of any right or remedy arising from a breach of the Call-Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Call-Off Contract.
2. **VARIATION**
   1. Subject to the provisions of this Clause 37.1, the Customer may request a variation to Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
   2. The Customer may request a Variation by completing and sending the Call-Off Terms and Conditions Variation request to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation request. Such time limits shall be reasonable having regard to the nature of the Order.
   3. In the event that the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Fees, the Customer may:
      1. agree to allow the Provider to continue to perform their obligations under the Call-Off Contract without the Variation; or
      2. terminate the Call-Off Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 56.
      3. If the Parties agree the Variation and any variation in the Fees, the Provider 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 Call-Off Contract.
3. **SEVERABILITY**
   1. If any provision of the Call-Off 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 Call-Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
   2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Call-Off Contract, the Customer and the Provider shall immediately commence good faith negotiations to remedy such invalidity.
4. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES**
   1. Where a complaint is received about the manner in which any Services have been supplied or work has been performed or about the procedures used or about any other matter connected with the performance of the Provider's obligations under the Call-Off Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 47 (Termination) of the Call-Off Contract.
   2. In the event that the Customer is of the reasonable opinion that there has been a material breach of the Call-Off Contract by the Provider, then the Customer may, without prejudice to its rights under Clause 47 (Termination), do any of the following:
      1. without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Provider will once more be able to supply all or such part of the Services in accordance with the Call-Off Contract;
      2. without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Fees shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
      3. terminate, in accordance with Clause 47 (Termination), the whole of the Call-Off Contract; and/or
      4. charge the Provider for and the Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that (i) the Provider has been given a reasonable opportunity to perform the Services prior to the Customer performing them or engaging a third party, and (ii) the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
   3. If the Provider fails to supply any of the Services in accordance with the provisions of the Call-Off Contract and such failure is capable of remedy, then the Customer shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.
   4. In the event that the Provider
      1. fails to comply with Clause 39.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
      2. persistently fails to comply with Clause 39.3 above

the Customer may terminate the Call-Off Contract with immediate effect by giving the Provider notice in writing.

1. **CUMULATIVE REMEDIES**
   1. Except as otherwise expressly provided by the Call-Off Contract, all remedies available to either Party for breach of the Call-Off 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.
2. **MONITORING OF CONTRACT PERFORMANCE**
   1. The Provider shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the Provider may be required to produce under the Call-Off Contract.

**LIABILITIES**

1. **LIABILITY, INDEMNITY AND INSURANCE**
   1. Nothing in the Call-Off Contract shall be construed to limit or exclude either Party's liability for:
      1. death or personal injury caused by its negligence or that of its Staff; or
      2. Fraud or fraudulent misrepresentation by it or that of its Staff.
   2. Subject to Clause 42.3 and Clause 42.4, the Provider shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services by the Provider of its obligations under the Call-Off Contract or the presence of the 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 Provider, or any other loss which is caused directly by any act or omission of the Provider or its Staff. The Provider shall not be responsible for any personal injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Call-Off Contract. This shall not apply if a Temporary Worker has been supplied to the Customer to perform work under the Customer’s direction, supervision and control.
   3. Subject always to Clause 42.4 and Clause 42.5, the liability of either Party for defaults shall be subject to the following financial limits:
      1. the aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other under or in connection with the Call-Off Contract shall in no event exceed [ VALUE TO BE DETERMINED/NEGOTIATED AT FURTHER COMPETITION]; and
      2. the annual aggregate liability under the Call-Off Contract of either Party for all defaults shall in no event exceed the greater of [VALUE TO BE DETERMINED/NEGOTIATED AT FURTHER COMPETITION] or [VALUE TO BE DETERMINED/NEGOTIATED AT FURTHER COMPETITION] per cent of the Fees payable by the Customer to the Provider in the year in which the liability arises.
   4. Subject to Clause 42.1, in no event shall either Party be liable to the other for any:
      1. loss of profits;
      2. loss of business;
      3. loss of revenue;
      4. loss of or damage to goodwill;
      5. loss of savings (whether anticipated or otherwise); and/or
      6. any indirect or consequential loss or damage.
   5. The Customer may, amongst other things, recover as a direct loss:
      1. any additional operational and/or administrative expenses arising from the Provider's default;
      2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Provider's default; and
      3. the additional cost of procuring replacement Services for the remainder of the Contract Period following termination of the Call-Off Contract as a result of a default by the Provider.
   6. Nothing in the Call-Off Contract shall impose any liability on the Customer in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Provider that may arise by virtue of either a breach of the Call-Off Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
   7. The Provider shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of insurable risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Call-Off Contract, including death or personal injury, loss of or damage to property or any other loss as set out in the Order Form. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) Years following the expiration or earlier termination of the Call-Off Contract.
   8. The Provider shall give the Customer, on request, copies of all insurance policies referred to in the Order Form 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.
   9. If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Call-Off Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
   10. The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Call-Off Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in the Order Form.
   11. Where the Provider directly causes or contributes to the below cost, liability, demand or expense, the Provider shall indemnify the Customer, and shall be able to produce evidence of the same indemnity from the Provider’s Sub-Contractors on request, against each and every cost, liability, demand or expense (including for the avoidance of doubt redundancy payments) or any liability for unfair or wrongful dismissal incurred by the Customer in connection with any Placement under this Call-Off Contract or Order Form including but not limited to:
       1. The Provider failing to pay any Sub-Contractor, Temporary Worker or any individual or company in connection with providing Services under this Call-Off Contract;
       2. Any claim arising out of the Provider or its Sub-Contractors failing to comply with their obligations both under this Call-Off Contract and Law; and
       3. Any claim arising directly due to the Provider or its Sub-Contractors failing to disclose information reasonably requested in relation to any Temporary Workers or any individual or company in connection with providing Services under this Call-Off Contract.
2. **PROFESSIONAL INDEMNITY**
   1. The Provider shall affect and maintain a professional indemnity insurance policy as set out in the Order Form during the Contract Period 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. To comply with its obligations under this Clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the sum set out in the Order Form and for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Call-Off Contract.
3. **TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**
   1. The Parties acknowledge and agree that the Call-Off Contract constitutes a contract for the provision of Services and not a contract of employment. The 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 Call-Off Contract. This indemnity shall not apply where the Customer has treated any Staff as its employees or where any Staff become employees of the Customer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).
   2. For the avoidance of doubt the responsibility of IR35 will sit with the Customer with support from the Provider.
4. **WARRANTIES AND REPRESENTATIONS**
   1. The Provider warrants and represents that:
      1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Call-Off Contract;
      2. the Call-Off Contract is executed by a duly authorised representative of the Provider;
      3. in entering the Call-Off Contract, it has not committed any Fraud;
      4. as at the Commencement Date, all information, statements and representations contained in the Tender response for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Call-Off 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;
      5. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Call-Off Contract;
      6. it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call-Off Contract;
      7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the 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 Provider's assets or revenue;
      8. it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights relevant to the delivery of the Services under this Call-off Contract shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
      9. obtained all consents and licences necessary for the performance of its obligations under the Call-Off Contract.
   2. in the three (3) years prior to the date of the Call-Off Contract:
      1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
      2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
      3. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call-Off Contract.

**DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION**

1. **SUSPENSION**
   1. Without prejudice to the Customer’s right to terminate the Call-Off Contract in Clause 47 below, the Customer, acting reasonably at all times, may suspend the Provider’s appointment to supply Services by giving notice in writing to the Provider. If the Customer provides notice to the Provider in accordance with this Clause 46, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Customer in writing from time to time.
   2. A Provider’s Appointment may be suspended to allow the Authority and/or the Customer the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Services under this Framework Agreement. Should this occur the Provider will be suspended (at no cost to the Authority or the Customer) whilst investigations take place. Any Orders already placed during this period shall be put on hold pending the outcome.
   3. Following suspension of a Provider’s appointment under this Clause 46 the Provider will be informed of the outcome as soon as possible and be advised whether or not they the Call-Off Contract has been terminated with immediate effect.
2. **TERMINATION**

**Termination - Insolvency and Change of Control**

* 1. The Customer may terminate the Call-Off Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:
     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;
     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);
     3. a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
     4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
     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;
     6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
     7. being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
     8. any event similar to those listed in Clause 47.1 occurs under the law of any other jurisdiction.
  2. The Customer may terminate the Call-Off Contract with immediate effect by notice in writing where the Provider is an individual and:
     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 Provider's creditors;
     2. a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy;
     3. a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
     4. the 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;
     5. a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days;
     6. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
     7. the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
  3. The Provider shall notify the Customer immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Call-Off Contract by notice in writing with immediate effect within six (6) Months of:
     1. being notified that a Change of Control has occurred; or
     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.

* 1. The Customer may terminate the Call-Off Contract with immediate effect by notice in writing where:
     1. the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Services;
     2. the Provider and its Staff employed in connection with the Services have failed to comply with the relevant Law governing the delivery of Services.

**Termination on Default – Minor Default**

* 1. Where the Provider commits a Minor Default of the Call-Off Contract, the Customer shall be entitled to issue the Provider with an “Improvement Notice”. Such Improvement Notice shall state the nature of the Minor Default and give the Provider a minimum of ten (10) working days to remedy the Minor Default.
  2. If the Provider commits three (3) Minor Defaults in a twelve (12) month rolling period, this will be classed as a Material Default and the Call-Off Contract may be terminated in accordance with Clause 47.7.3.

**Termination on Default – Material Default**

* 1. The Customer may terminate the Call-Off Contract by serving written notice on the Provider with effect from the date specified in such notice, where the Provider commits a Material Default and:
     1. the Provider has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied;
     2. the Material Default is not, in the reasonable opinion of the Customer, capable of remedy;
     3. if the Provider has committed three (3) or more Minor Defaults within a twelve (12) month rolling period;
     4. where any Customer terminates a Call-Off Contract awarded to the Provider under the Framework Agreement as a consequence of a Material Default by the Provider.
  2. If the Customer fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90)Working Days of the date of such written notice, the Provider may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 21 (Recovery of Sums Due).
  3. If the Provider has been suspended in accordance with Clause 46 and the outcome following such suspension shows the Provider to be at fault, to have provided Services not to the required specification or that the Provider has acted in breach of this Call-Off Contract and/or the Framework Agreement then the Customer may serve notice on the Provider to terminate the Call-Off Contract.
  4. Any of the provisions in Regulation 73(1) of the Regulations apply

1. **BREAK**
   1. The Customer shall have the right to terminate the Call-Off Contract at any time by giving three (3) Months written notice to the Provider.
2. **FRAMEWORK AGREEMENT**
   1. The Customer may terminate the Call-Off Contract by giving written notice to the Provider with immediate effect if the Framework Agreement is terminated for any reason whatsoever.
3. **CONSEQUENCES OF EXPIRY OR TERMINATION**
   1. Where the Customer terminates the Call-Off Contract under Clause 47 and then makes other arrangements for the supply of Services, the Customer may recover from the 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 Clause 47, no further payments shall be payable by the Customer to the Provider until the Customer has established the final cost of making those other arrangements.
   2. Where the Customer terminates the Call-Off Contract under Clause 48, the Customer shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Provider by reason of the termination of the Call-Off Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and valuated list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause 48.
   3. The Customer shall not be liable under Clause 50.2 to pay any sum which:
      1. was claimable under insurance held by the Provider, and the 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
      2. when added to any sums paid or due to the Provider under the Call-Off Contract, exceeds the total sum that would have been payable to the Provider if the Call-Off Contract had not been terminated prior to the expiry of the Contract Period.
   4. Save as otherwise expressly provided in the Call-Off Contract:
      1. termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
      2. Within thirty (30) Working Days of the date of termination or expiry of the Call-Off Contract, the Provider shall return to the Customer any data and Confidential Information belonging to the Customer that is in the Provider's possession, power or control, either in its then current format or in a format nominated by Customer, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Call-Off Contract, or such period as is necessary for such compliance.
      3. termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Provider under Clauses 19 (Payment and VAT), 21 (Recovery of Sums Due), 22 (Prevention of Bribery and Corruption), 27 (Data Protection Act), 22 (Freedom of Information), 29 (Confidential Information), 33 (Intellectual Property Rights), 34 (Records and Audit Access), 40 (Cumulative Remedies), 42 (Liability, Indemnity and Insurance), 43 (Professional Indemnity), 50 (Consequences of Expiry or Termination), 52 (Recovery upon Termination) and 54 (Governing Law).
4. **DISRUPTION**
   1. The Provider shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Customer, its employees or any other Provider employed by the Customer.
   2. The Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.
   3. In the event of industrial action by the Staff, the Provider 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 Call-Off Contract.
   4. If the Provider's proposals referred to in Clause 51.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Call-Off Contract may be terminated with immediate effect by the Customer by notice in writing.
   5. If the Provider is temporarily unable to fulfil the requirements of the Call-Off 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 Provider as a direct result of such disruption.
5. **RECOVERY UPON TERMINATION**
   1. On the termination of the Call-Off Contract for any reason, the Provider shall:
      1. immediately return to the Customer all Confidential Information, Personal Data and Customer’s Pre-Existing IPR’s and the Project Specific IPR’s in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
      2. immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Provider under this Call-Off Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
      3. assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress;
      4. 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 Provider to conduct due diligence.
   2. If the Provider fails to comply with Clause 52.1 the Client may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors where any such items may be held.
   3. Where the end of the Contract Period arises due to the Provider’s Default, the Provider shall provide all assistance under Clause 52.1 free of charge. Otherwise, the Customer shall pay the Provider’s reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.
   4. At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 33 shall automatically terminate without the need to serve notice.
6. **FORCE MAJEURE**
   1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Call-Off 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 Call-Off Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Call-Off Contract for a period in excess of six (6) Months, either Party may terminate the Call-Off Contract with immediate effect by notice in writing.
   2. Any failure or delay by the Provider in performing its obligations under the Call-Off Contract which results from any failure or delay by an agent or Sub-Contractor shall be regarded as due to Force Majeure only if that agent or Sub-Contractor is itself impeded by Force Majeure from complying with an obligation to the Provider.
   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 53.1 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.
   4. It is expressly agreed that any failure by the Provider to perform or any delay by the Provider in performing its obligations under the Call-Off Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Provider shall have entered into any contract, supply arrangement or sub‑contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub‑contract or otherwise as a result of circumstances of Force Majeure.
   5. For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

**DISPUTES AND LAW**

1. **GOVERNING LAW**
   1. The Call-Off Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Call-Off Contract is to be governed exclusively by and construed under English law.
   2. This Call-Off Contract is binding on the Customer and its successors and assignees and the Provider and the Provider's successors and permitted assignees.
2. **TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS (TUPE)**
   1. During the period of six (6) Months preceding the expiry of this Call-Off Contract or after the Customer has given notice to terminate the Call-Off Contract or the Provider stops trading, and within twenty (20) Working Days of being so requested by the Customer, the Provider shall fully and accurately disclose to the Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Services under the Call-Off Contract (subject to data protection obligations), in particular but not necessarily restricted to, the following:
      1. the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of the Call-Off Contract but for any operation of law;
      2. for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates, but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);
      3. full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;
      4. details of pensions entitlements, if any; and
      5. job titles of the members of Staff affected and the qualifications required for each position.
   2. The Provider shall permit the Customer to use the information for the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Service by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.
   3. The Provider agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 55.1.
   4. In the event that the information provided by the Provider in accordance with Clause 55 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Customer of the inaccuracies and provide the amended information.
   5. The provisions of this Clause 55 shall apply during the continuance of the Call-Off Contract and for 12 Months after its termination.
3. **DISPUTE RESOLUTION**
   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 Call-Off Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
   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.
   3. If the dispute cannot be resolved by the Parties pursuant to Clause 56.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 56.5 unless:
      1. the Customer considers that the dispute is not suitable for resolution by mediation; or
      2. the Provider does not agree to mediation.
   4. The obligations of the Parties under the Call-Off Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Call-Off Contract at all times.
   5. The procedure for mediation and consequential provisions relating to mediation are as follows:
      1. A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within then (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to specify relevant mediation Provider to appoint a Mediator;
      2. The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;
      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;
      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;
      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 Call-Off Contract without the prior written consent of both Parties; and
      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.

**Appendix 1:**

**FEES FOR SERVICES**

**Appendix 2:**

**ADDITIONAL SERVICES**

|  |  |
| --- | --- |
| **HR Additional Service Category** | **HR Additional Service** |
| **Recruitment** | Permanent recruitment |
| Recruitment Process Support (Screening/Interviewing) |
| Provider employed consultants |
| Project work |
| Statement of Work |
| Other areas of recruitment |
|  |  |
| **Corporate HR services** | Project & portfolio management |
| Risk auditing |
| HR audit |
| HR Administration |
| Change management |
| Equality, Diversity & Inclusion (ED&I) analysis and evaluation |
| Quality management |
| Other corporate HR services |
|  |  |
| **Payroll & Benefits** | Pension management and administration |
| Payroll management |
| Employee benefits |
| Background and employment statutory checks including vetting |
| DBS checks |
| Benefits & rewards |
| Salary reviews |
| Flexible working |
| Data analytics |
| Flexible benefits |
| Other Payroll & Benefits |
|  |  |
| **Talent Management** | HR Skills |
| Employee development (Inc. appraisals, KPIs, training/talent/development) |
| Performance management (inc ability / psychometric testing, analysis, reviews) |
| Talent pool management and systems |
| Assessment centres |
| Recruitment management - applicant tracking and attraction, web recruitment |
| Managed learning programmes |
| Employment training |
| Other Talent management |
|  |  |
| **People and HR Management** | TUPE management |
| Restructure Management |
| People management (Inc absence, new starters/leavers, discipline management) |
| Redundancy |
| HR Software solutions including VMS |
| HR management – training and development, skills management |
| Diversity & Inclusivity |
| Job Evaluation |
| Onboarding |
| Career Transition |
| Outplacement |
| Employee wellbeing |
| Employee engagement |
| Other People and HR management |
|  |  |
| **Outcome focused** | All outcome focused services |