

## **SCHEDULE 7**

### **CALL-OFF TERMS AND CONDITIONS**

**(FOR USE BETWEEN THE CONTRACTING AUTHORITY AND THE MSP)**

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## 1. INTERPRETATION

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

- "Approval" and "Approved"** means the written consent of the Contracting Authority not to be unreasonably withheld or delayed
- "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 Contracting Authority
- "Base Location"** means the location, specified by the Contracting Authority (in the Order Form) at which the majority of the Services shall be delivered
- "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 anticipated by the MSP prior to the Effective Date) which:
- (i) relates specifically to the business or operations of the Contracting Authority only; or
  - (ii) relates specifically to the provision of the Contract Services
- and which in either case, would require the MSP 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 MSP and designated as commercially sensitive information by the Contracting Authority for the period set out in that Order Form
- "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 all personal data and sensitive personal data within the meaning of the DPA; 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 30 (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

<b>“Consultant/Professional”</b>	shall mean an individual or company who has been selected by the Contracting Authority for a specific piece of work or outcomes-based project over a set period of time
<b>“Consultancy”</b>	means the delivery of a service through a project or statement of work
<b>“Consultancy Organisation”</b>	shall mean a company who has been retained by the Managed Service Provider for a statement of work or project over a set period of time
<b>"Contract"</b>	means the written agreement between the Contracting Authority and the MSP consisting of the Order Form and these clauses save that for the purposes of Clause Interpretation only, reference to Contract shall not include the Order Form
<b>"Contract Period"</b>	means the period from the Commencement Date to: - <ul style="list-style-type: none"><li>(a) the date of expiry set out in Clause 2 (Initial Contract Period); or</li><li>(b) following an extension pursuant to Clause 3 (Extension of Initial Contract Period), the date of expiry of the extended period; or</li><li>(c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract</li></ul>
<b>" Project/Statement of Work Price"</b>	means the price (exclusive of any applicable VAT), payable to the MSP by the Contracting Authority under the Contract, as set out in the Order Form, for the full and proper performance by the MSP of its obligations under the Contract
<b>"Contracting Authority"</b>	means YPO and any Contracting Authority for the purposes of the Public Contracts Regulations 2015
<b>"Crown"</b>	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

<b>“Contracting Authority”</b>	means the Contracting Authority(s) identified in the Order Form
<b>“Data Controller”</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the MSP 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
<b>“Data Processor”</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>“Data Protection Legislation” or “DPA”</b>	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
<b>“Data Subject”</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>“Data Subject Access Request”</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data
<b>“Day Rate”</b>	means the fee to the Consultant/Professional for the work they undertake for each Project/Statement of Work
<b>"Default"</b>	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 Contract and in respect of which such Party is liable to the other
<b>"Deliverables"</b>	means those deliverables listed in the Order Form
<b>"EIR"</b>	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

<b>"Equipment"</b>	means the MSP's equipment, plant, materials and such other items supplied and used by the MSP in the performance of its obligations under the Contract
<b>"FOIA"</b>	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
<b>"Force Majeure"</b>	<p>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: -</p> <ul style="list-style-type: none"><li>(a) any industrial action occurring within the MSP's or any Consultant/Professional organisation; or</li><li>(b) the failure by any Consultant/Professional 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);</li><li>(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;</li></ul>
<b>"Framework Agreement"</b>	means the framework agreement for the provision Services between YPO and the MSP
<b>"Fraud"</b>	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 Contract or defrauding or attempting to defraud or conspiring to defraud YPO, a Contracting Authority or the Contracting Authority
<b>"Good Industry Practice"</b>	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 Contracting Authority engaged in a similar type of undertaking under the same or similar circumstances
<b>"Improvement Notice"</b>	means a notice issued on the MSP to improve Minor Defaults of the Framework Agreement, the Contract or the Order Form instructing the MSP to improve or remedy any Minor Defaults in the provision of the Services

<b>"Information"</b>	has the meaning given under section 84 of the FOIA
<b>"Intellectual Property Rights" and "IPRs"</b>	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
<b>"Law"</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Authority of which the MSP is bound to comply
<b>"Material Default"</b>	means any breach of Clauses 10 (Conflict of Interest), 23 (Prevention of Bribery and Corruption), 27 (Health and Safety), 28 (Data Protection Act), 29 (Freedom of Information Act and Environmental Information Regulations), 35 (Records and Audit Access), 36 (Transfer and Sub-Contracting), 46 (Warranties and Representations)
<b>"Milestones"</b>	means the different stages within a Project/Statement of Work. These will be agreed between the MSP and Contracting Authority
<b>"Month"</b>	means calendar month
<b>"MSP"</b>	means the person, firm or company or organisation whom executes this Contract and includes any employee, agent, servant or representative of the MSP or person employed by on or on behalf of the MSP to provide the Services
<b>"MSP Contract Manager"</b>	means the person appointed by the MSP to manage the Contract
<b>"MSP Delivery Team"</b>	means any individual identified in the Order Form as being part of the MSP's delivery team
<b>"MSP Fee"</b>	means the fee due to the Managed Service Provider for their Services and is a percentage of the final rate of each Consultant/Professional. The MSP Fee must be inclusive of all costs associated with providing the Services. The MSP Fee is inclusive of the Retrospective Payment
<b>"Order"</b>	means the order submitted by the Contracting Authority to the MSP in accordance with the Framework Agreement
<b>"Order Form"</b>	means the order submitted to the MSP by the Contracting Authority in accordance with the Framework Agreement which sets out the description



of the Services to be supplied including, where appropriate, the MSP Delivery Team, the Premises, the timeframe, the Deliverables and the Quality Standards

**"Parent Company"**

means any company which is the ultimate Holding Company of the MSP or any other company of which the ultimate Holding Company of the MSP is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the MSP or which is engaged by the same or similar business to the MSP. 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 MSP or the Contracting Authority

**"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 Contracting Authority or the MSP prior to or independent of the performance by the Contracting Authority or the MSP of their obligations under the Contract and in respect of the Contracting Authority 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:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by YPO or another Contracting Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Call-off Contract; or

defrauding, attempting to defraud or conspiring to defraud YPO or any other Contracting Authority.

**“Project/Statement of Work”** means the outcomes-based piece of work being undertaken by the Consultant/Professional

**“Project/Statement of Work Price”** means the total cost of each project or statement of work, this includes the MSP Fee and the Day Rate

**"Project Specific IPRs"** means

(a) IPRs in Services and/or Deliverables created by the MSP, (or by a third party on behalf of the MSP) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items; and/or

(b) IPRs arising as a result of the provision of the Services and/or Deliverables by the MSPs under the Contract; and/or

(c) IPRs arising as a result of the Project/Statement of Work delivered by the Consultant/ Professional and/or Consultancy Organisation

**"Property"** means the property, other than real property, issued or made available to the MSP by the Contracting Authority in connection with the Contract

**“Proposal”** means the information submitted by the Consultant/Professional or Consultancy Organisation to the MSP for consideration by the MSP and Contracting Authority. This information must include details regarding the Consultant/Professional including but not limited to their area of expertise, previous relevant project history and must detail how they would complete the Project/Statement of Work

**"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 MSP 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

<b>"Request for Information"</b>	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)
<b>"Services"</b>	means the services to be provided as specified in the Order Form and as defined in the Contract and Appendix 1
<b>"Service Levels"</b>	means the service levels set out in Appendix 1
<b>"Sub-Processor"</b>	means any third Party appointed to Process Personal Data on behalf of the MSP related to this Call Off Contract
<b>"Staff"</b>	means all persons employed by the MSP to perform its obligations under the Contract together with the MSP's servants, agents, MSPs and Consultant/Professional or Consultancy Organisation used in the performance of its obligations under the Contract
<b>"Staff Vetting Procedures"</b>	means the Contracting Authority's Procedures and departmental policies for the vetting of Staff 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
<b>"Tender"</b>	means the document(s) submitted by the MSP to the Contracting Authority in response to the Contracting Authority's invitation to MSPs for formal offers to supply it with the Services
<b>"Term"</b>	means the period commencing on the Commencement Date and ending on <b>24 SEPTEMBER 2025</b> or on earlier termination of this Call Off Contract
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales
<b>"Year"</b>	means a calendar year
<b>"YPO"</b>	means YPO, any employee, agent servant or representative of YPO or any other public authority or person employed on behalf of YPO

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

- 
- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

- 1.4 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;
- 1.5 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;
- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.8 Reference to any employees of the MSP shall be deemed to include the MSP's agents and Consultant/Professional unless expressly stated otherwise.
- 1.9 "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.

## **2. INITIAL CONTRACT PERIOD**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form (12 Months), unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

## **3. EXTENSION OF INITIAL CONTRACT PERIOD**

- 3.1 Subject to satisfactory performance of its obligations under the Contract by the MSP during the Initial Contract Period, the Contracting Authority may, by giving written notice to the MSP not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

## **4. MSP STATUS**

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

## **5. PROVISION OF MANAGEMENT INFORMATION**

- 5.1 The MSP shall submit Management Information to YPO in the form set out in Schedule 4 of the Framework Agreement, and to the Contracting Authority in such form as may be specified, throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with any Contracting Authority.
- 5.2 YPO may share the Management Information provided by the MSP with any Contracting Authority.
- 5.3 YPO may make changes to the Management Information which the MSP is required to supply and shall give the MSP 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 MSP.

## **6. CONTRACTING AUTHORITY OBLIGATIONS**

- 6.1 Save as otherwise expressly provided, the obligations of the Contracting Authority under the Contract are obligations of the Contracting Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other

way fetter or constrain the Contracting Authority in any other capacity, nor shall the exercise by the Contracting Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Contracting Authority to the MSP.

- 6.2 The Contracting Authority will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.3 The Contracting Authority shall respond to any reasonable request for information from the MSP.
- 6.4 The Contracting Authority will assign an authorised representative who will liaise with the MSP's Contract Manager, to ensure both parties use reasonable endeavours to meet their contractual obligations.
- 6.5 The Contracting Authority 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).
- 6.6 The Contracting Authority shall ensure that they provide a reasonable level of detail to the MSP at all times in order for the MSP to provide the Services and to pass onto the Consultant/Professional or Consultancy Organisation in order for them to put together a Proposal.
- 6.7 The Contracting Authority shall ensure that they provide all relevant information to the Consultant/Professional or Consultancy Organisation in order for them to fully complete the Project/Statement of Work.

## **7. ENTIRE AGREEMENT**

- 7.1 Subject to the provisions of the Framework Agreement relating to Call-off Contracts, this Contract and the Order Form 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.
- 7.2 Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. 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 Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -

7.4.1 the Order Form

7.4.2 the clauses of the Contract; and

7.4.3 any other document referred to in the clauses of the Contract

- 7.5 For the avoidance of doubt any terms that the MSP may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.
- 7.6 The 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.

## **8. NOTICES**

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

8.2 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), by facsimile transmission 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 facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

8.3 For the purposes of Clause 8.2, the address of each Party shall be:

8.3.1 For the Contracting Authority: the address set out in the Order Form.

8.3.2 For the MSP: the address set out in the Framework Agreement.

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

## 9. MISTAKES IN INFORMATION

9.1 Subject to any inputs from the Contracting Authority, the MSP shall be responsible for the accuracy of all documentation and information supplied to the Contracting Authority by the MSP in connection with the supply of the Services, including the accuracy of any Project/Statement of Work information supplied by the MSP or the Consultant/Professional or the Consultancy Organisation and subject to Clause **Error! Reference source not found.**, s hall pay the Contracting Authority any extra costs directly occasioned by any discrepancies, errors or omissions therein.

## 10. CONFLICTS OF INTEREST

10.1 The MSP shall take appropriate steps to ensure that neither the MSP nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the MSP or connected company and the duties owed to the Contracting Authority under the provisions of the Contract.

10.2 The MSP shall promptly notify the Contracting Authority (and provide full particulars to the Contracting Authority) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.

10.3 The Contracting Authority reserves the right to terminate the Contract immediately by giving notice in writing to the MSP and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the MSP and the duties owed to the Contracting Authority under the provisions of the Contract. The actions of the Contracting Authority 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 Contracting Authority.

## 11. PREVENTION OF FRAUD

11.1 The MSP shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff, Consultant/Professionals and the MSP (including its shareholders, members and directors) in connection with the receipt of monies from the Contracting Authority.

11.2 The MSP shall notify the Contracting Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

11.3 If the MSP, its Staff or any Consultant/Professionals commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Contracting Authority, the Contracting Authority may (subject to Clause 43): -

11.3.1 terminate the Contract with immediate effect by giving the MSP notice in writing and recover from the MSP the amount of any loss suffered by the Contracting Authority resulting from the termination including the cost reasonably incurred by the Contracting Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period; and/or

11.3.2 recover in full from the MSP any other loss sustained by the Contracting Authority in consequence of any breach of this clause.

## 12. SUPPLY OF THE SERVICES

12.1 The MSP shall supply the Services to the Contracting Authority in accordance with the provisions of the Contract and to fulfil the requirements of the Contracting Authority.

12.2 The MSP shall:

12.2.1 comply with all reasonable instructions given to the MSP and its Staff by the Contracting Authority in relation to the Services from time to time, including reasonable instructions to reschedule or alter the Services;

12.2.2 immediately report to the Contracting Authority's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 10;

12.2.3 co-operate with the Contracting Authority and the Contracting Authority's other professional advisers in relation to the Services as required by the Contracting Authority;

12.2.4 comply with the Contracting Authority'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 MSP in writing by the Contracting Authority including where applicable, but not limited to, such policies, procedures, codes and practices listed in Appendix 1 of the Order Form. The Contracting Authority is able to request additional policy compliance from the MSP during the Contract;

12.2.5 understand the meaning of and the importance of Projects/Statement of Works, Milestones and how these must be monitored against;

12.2.6 develop a well-established Consultant/Professional and Consultancy Organisation market to be able to achieve the deliverables of a public sector organisation.

12.3 The MSP shall not:

12.3.1 knowingly act at any time during the term of the 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 Contracting Authority shall thereby exist in relation to the Contract Services; or

12.3.2 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Contracting Authority's written agreement; or

12.3.3 without the prior written consent of the Contracting Authority, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or

12.3.4 pledge the credit of the Contracting Authority in any way; or

12.3.5 engage in any conduct which in the reasonable opinion of the Contracting Authority is prejudicial to the Contracting Authority.

12.3.6 without the prior written consent of the Contracting Authority, introduce new methods or systems which materially impact on the provision of the Ordered Services

12.4 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.

12.5 Where the MSP 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 MSP's obligations under the Contract.

#### 12.6 **Variation of Contract Services**

12.6.1 The Contracting Authority may request a variation to the Services at any time provided that such variation does not amount to a material change to the delivery aims and outcomes of the Project/Statement of Work (as determined by both the Contracting Authority and the MSP).

12.6.2 Any request by the Contracting Authority for a variation to the Services shall be by written notice to the MSP:

- (a) giving sufficient information for the MSP to assess the extent of the variation and any additional costs that may be incurred; and
- (b) specifying the timeframe within which the MSP must respond to the request, which shall be reasonable,

and the MSP shall respond to such request within such timeframe.

12.6.3 Any such variation agreed between the Contracting Authority and the MSP pursuant to Clause 38 shall not be valid unless in writing and signed by the Parties. Furthermore, any written and signed variation between the Parties shall be appended to the Order Form. In the event that the MSP and the Contracting Authority are unable to agree to a proposed variation including any change to the Contract Charges in connection with the requested variation to the Services, the Contracting Authority may agree that the MSP should continue to perform its obligations under the Contract without the variation or may terminate the Contract with immediate effect, except where the MSP has already delivered part or all of the Order in accordance with the Order Form or where the MSP 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.

### 13. **THE SERVICES**

#### 13.1 **General**



13.1.1 If the MSP is appointed by the Contracting Authority, the MSP shall provide the Services to the Contracting Authority in accordance with:

- (a) the provisions of their Framework Agreement and each Call-Off Contract;
- (b) the Contracting Authority's reasonable requests from time to time.

13.1.2 The MSP 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 Contracting Authority and understands that a degree of flexibility may be requested by the Contracting Authority in relation to way the Services are provided to each Contracting Authority.

13.1.3 The MSP shall ensure that it maintains sufficient skilled and experienced Staff to provide the Services to the highest industry standard and in a timely fashion. In addition, the MSP shall ensure that its employees are adequately trained and understand the implications and duties of all relevant employment legislation and treat all Consultant/Professionals in a professional and appropriate manner, and fairly and equally.

13.1.4 The MSP must ensure that the Contracting Authority is provided with contact details for any enquires they have during business hours, Monday to Friday between the hours of 9am and 5pm. This must include both email addresses and telephone numbers.

13.1.5 The MSP must ensure that all successful Consultant/Professionals or Consultancy Organisations are provided with contact details for any enquires they have during business hours, Monday to Friday between the hours of 9am and 5pm. This must include both email addresses and telephone numbers.

13.1.6 The MSP must be able to evidence their process of issuing requests for submissions and receiving submissions back and how these are reviewed if requested. These processes must be in line with the specification received from the Contracting Authority.

13.1.7 The MSP agrees to co-operate with a Contracting Authority regarding the transfer of information in respect of each Project/Statement of Work requirement, in order to ensure that the Consultant/Professional or Consultancy Organisation is suitable for such Project/Statement of Work and to comply with its obligations under the Conduct Regulations.

13.1.8 The MSP shall always endeavour to ensure the suitability of a Consultant/Professional or Consultancy Organisation (including, without limitation, that each Consultant/Professional 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.

13.1.9 The MSP must ensure that the potential Consultant/Professionals and Consultancy Organisations are aware that at no time is there any guarantee of a Project/Statement of Work. The MSP will select which Consultants/Professionals or Consultancy Organisation they believe are suitable for the Project/Statement of Work. Those Consultants/Professionals or Consultancy Organisation will then put together a Proposal which will be checked by the MSP and the best proposals put forward to the Contracting Authority. The Contracting Authority will then decide which Consultant/Professional or Consultancy Organisation will deliver the Project/Statement of Work.

13.1.10 The MSP shall not submit any Consultant/Professional's or Consultancy Organisations details to a Contracting Authority on a speculative basis, unless previously agreed with the Contracting Authority.

13.1.11 During the Term of the Agreement the MSP shall be obliged:

- (a) 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 Contracting Authority's use of the MSP and the Project/Statement of Work Price or MSP Fee payable to it under this Agreement and any tax liabilities in respect of the Consultant/Professionals, or Consultancy Organisation and the Staff (where applicable);
- (b) to perform the checks to establish and confirm that each Consultant/Professional and each of the MSP's Staff is entitled to live and work in the UK. Should any Consultant/Professional and / or MSP's Staff cease to be entitled to live and work in the UK at any time during the term of a Project/Statement of Work to a Contracting Authority, the MSP shall immediately notify the Contracting Authority of this fact and the Contracting Authority will be entitled to immediately terminate any relevant agreement in respect of that Consultant/Professional and / or the MSP's Staff. For the avoidance of doubt it is assumed that a Consultancy Organisation has carried out employability checks in the normal course of their employment on each individual supporting in the completion of the Project/Statement of Work; and
- (c) to provide proof of a Consultant/Professional's qualifications, training and experience requested by the Contracting Authority or required by law or any professional body for the performance of the Project/Statement of Work. For the avoidance of doubt a Consultancy Organisation is responsible for providing qualified and experienced individuals to support in the completion of the Project/Statement of Work but do not have to provide evidence of an individual's qualifications, training and experience.
- (d) to support the Contracting Authority, if requested, in completing the IR35 checks for all Consultant/Professionals.

13.1.12 The MSP shall procure that all Employees, Consultant/Professionals, Consultancy Organisations and the MSP's Staff shall:

- (a) attend such location as may be reasonably required for the proper provision of the Services;
- (b) observe the Contracting Authority's general rules and procedures with regard to the Project/Statement of Work including without limitation the Contracting Authority's policies in respect of: IT, health and safety at work, security, smoking, dress code, attendance and Code of Conduct. Employees, Consultants and the MSP's Staff (as appropriate) will, on commencement of the Project/Statement of Work, be given access to all of a Contracting Authority's relevant policies and guidelines so that they know the rules and procedures, which need to be followed;
- (c) notify the Contracting Authority so far as possible in advance of any periods over which they will be unable to carry out the Project/Statement of Work or provide the

Services (as appropriate) due to the holiday, sickness, maternity leave, shared parental leave, paternity leave or other reason for non-attendance;

- (d) act in a civil, co-operative and non-discriminatory fashion towards a Contracting Authority's employees, clients and other business contacts; and
- (e) acknowledge and agree that a Contracting Authority shall at all times have the right without thereby being in breach of this Agreement or the Call-Off Contract, to require the MSP to remove immediately from a Contracting Authority's site any Employees, Consultants engaged there on a Project/Statement of Work or any of the MSP's Staff who are providing Services.

13.1.13 The MSP shall ensure that in putting forward a Consultant/Professional's or Consultancy Organisations Proposal in response to a brief by a Contracting Authority, it adheres to the following:

- (a) The MSP must have a supply chain management process in place and must be able to evidence this to YPO or the Contracting Authority upon request.
- (b) The MSP must have a full and in-depth conversation and/or meeting with the Consultant/Professional or the Consultancy Organisation prior to them being put forward to the Contracting Authority.
- (c) The Consultant/Professional or Consultancy Organisation should be fully briefed (verbally or by email) and provide written consent to the MSP to send their Proposal for the specific brief referencing the Project/Statement of Work reference number.
- (d) The Consultant/Professional's or Consultancy Organisations Proposal must be emailed to the relevant contact at the Contracting Authority. The email shall be in the following format:
  - (i) full Consultant/Professional's or Consultancy Organisations name and the Project/Statement of Work applied for;
  - (ii) the reasons why the Consultant/Professional or Consultancy Organisation is suitable for this specific Project/Statement of Work in the text of the email; and
  - (iii) the written consent from the Consultant/Professional or Consultancy Organisation to be put forward for the relevant Project/Statement of Work and the Proposal attached or appended either as an email or a scanned PDF document and accurately dated.

## 13.2 **Consultant/Professional, Consultancy Organisation – Specific Terms**

### **Pre-Engagement**

13.2.1 The MSP must be able to offer to all Contracting Authorities the option of having access to Consultant/Professionals or Consultancy Organisations and will recommend the most suitable route to the Contracting Authority.

13.2.2 The MSP shall ensure that they maintain good relationships with and access to qualified Consultant/Professionals and Consultancy Organisations in all different areas of expertise to make sure they have a wide coverage to be able to respond to the Contracting Authorities requests quickly. The list of consultancy areas that may be requested are detailed at Appendix 3.

13.2.3 The MSP must work with the Contracting Authority to understand their requirements fully. This includes providing information, advice and guidance to the Contracting Authority regarding their requirements and assisting the Contracting Authority to develop their requirements and ensure that they are suitable. This also includes assessing if the Project/Statement of Work is needed.

13.2.4 If the Contracting Authority already knows the Consultant/Professional or Consultancy Organisation, they wish to work with then the MSP must onboard that Consultant/Professional or Consultancy Organisation onto their supply chain.

13.2.5 If the Contracting Authority knows the service, they will require then the MSP must support them in finding a solution or suitable Consultant/Professional or Consultancy Organisation to deliver this.

13.2.6 If the Contracting Authority knows the outcome of the Project/Statement of Work but requires the MSP to support or create the specification, then the MSP must work with the Contracting Authority to prepare any business cases or put together a document detailing their requirements including a specification.

### **Vetting**

13.2.7 The MSP shall ensure that the Consultant/Professional is fully vetted, audited and ready to deliver the requirements relevant to their Consultancy area. This vetting process will be in line with the MSP's own vetting and approval process and will have been agreed with YPO following award of the Framework Agreement. This should include but is not limited to checking all skills, qualifications and experience necessary for completion of the Project/Statement of Work as well as any additional requirements the Contracting Authority has, for example if DBS checks are in place.

13.2.8 It is trusted that a Consultancy Organisation will provide individuals who have been correctly vetted for the relevant Project/Statement of Work.

13.2.9 The MSP will have and maintain an electronic management information system which will contain up to date information on all Consultant/Professionals and Consultancy Organisations.

### **Submissions**

13.2.10 Once the MSP understands the requirements of the Contracting Authority they will make contact with all relevant and qualified Consultant/Professionals and/or Consultancy Organisations who could fulfil the Contracting Authorities requirements fully and request the Consultant/Professional or Consultancy Organisations send their Proposals to the MSP for consideration.

13.2.11 The MSP must review all Proposals received from the Consultant/Professionals and/or Consultancy Organisations in relation to the Contracting Authorities requirements, taking into account the best quality service and the most competitive rates. The MSP must ensure transparency and consistency at all times.

13.2.12 The MSP must put forward to the Contracting Authority the Proposals of the Consultant/Professionals and/or Consultancy Organisations they believe will be suitable following review of each of the Proposals but will remain impartial and unbiased at all times other than providing their expert knowledge. The MSP must not put itself into a position where its interests' conflict with YPO's or any Contracting Authority.

13.2.13 The MSP will not submit a Consultant/Professional's or Consultancy Organisation's Proposal to a Contracting Authority for consideration in response to a specific Project/Statement of Work unless the MSP has previously reviewed the

Consultant/Professionals or Consultancy Organisations Proposal. The MSP must also have screened the Consultant/Professional or Consultancy Organisations to ensure that they will fit with both the Contracting Authority's culture and the requirements of the Contracting Authority. The Consultant/Professional or Consultancy Organisation must express their permission for their details to be submitted to the Contracting Authority.

13.2.14 The MSP shall fully brief all Consultant/Professionals and Consultancy Organisations prior to the submission of their Proposal to a Contracting Authority.

13.2.15 The MSP must facilitate any clarifications the Contracting Authority has by passing on any clarifications the Contracting Authority has onto the potential Consultant/Professional or Consultancy Organisation and then passing any responses back to the Contracting Authority.

13.2.16 The MSP will arrange any communication with the Consultant/Professional and/or that the Contracting Authority requests.

13.2.17 The Contracting Authority will decide which Consultant/Professional's or Consultancy Organisations submission to accept using a fair and transparent process and will inform the MSP of its decision. The MSP will inform the Consultant/Professionals and/or Consultancy Organisations of the outcome and subject to the successful Consultant/Professional or Consultancy Organisation accepting the offer, arrange the commencement of the Project/Statement of Work.

13.2.18 The MSP will enter into a contract with the successful Consultant/Professional or Consultancy Organisation prior to the Project/Statement of Work commencement. A separate contract must be in place for each Project/Statement of Work. Copies of this contract must be provided to the Contracting Authority upon request.

13.2.19 The MSP must agree Milestones with the Contracting Authority and track the Project/Statement of Work against these Milestones. It is the responsibility of the MSP to ensure that the Consultant/Professional or Consultancy Organisation achieves the outcomes required by the Contracting Authority.

### **Payment**

13.2.20 Subject to the Contracting Authority's timely payment, the MSP shall be wholly responsible for the payment to the Consultant/Professional or Consultancy Organisation of all invoices due in relation to Services delivered in line with the Order Form and this Contract. Subject to Clause **Error! Reference source not found.** and 43.12, the MSP shall indemnify and hold harmless YPO and the Contracting Authority for all Liabilities incurred by the Contracting Authority as a result of any failure by the MSP to pay any such invoices or taxation (if it is found to be applicable) and any deductions required by law anywhere in the world.

### **During the Project/Statement of Work**

13.2.21 The MSP must carry out reporting, Milestone reviews and Management Information tracking as per this Contract, the Order Form, specification and Invitation to Tender. The Contracting Authority may request access to the MSP's system or records to monitor the status of a Project/Statement of Work at no additional cost to the Contracting Authority.

13.2.22 The MSP must ensure that the successful Consultant/Professional or Consultancy Organisation is aware of any obligations that they have to comply with under the Framework Agreement or Contract.

13.2.23 Any feedback that is provided to the MSP by the Contracting Authority regarding the Consultant/Professional or Consultancy Organisation must be passed on to the Consultant/Professional or Consultancy Organisation.

13.2.24 In the event that a Consultant/Professional or Consultancy Organisation proves to be unsatisfactory and the Contracting Authority notifies the MSP within the [first] day of the commencement of the Project/Statement of Work that this is the case, no charge will be made provided that the Consultant/Professional or Consultancy Organisation completes no more than [1] day of work at the site and is asked by the Contracting Authority to leave the site or Base Location at the earliest reasonable time. At the Contracting Authority's request, the MSP will take immediate steps to source a replacement.

13.2.25 In the event that a Project/Statement of Work terminates within the term of the Project/Statement of Work (whether by expiry of notice or otherwise), without the prior written agreement of the Contracting Authority, and provided:

- (a) The Contracting Authority notifies the MSP in writing of the termination of the Project/Statement of Work within 14 days of such termination; and
- (b) the termination is not due to redundancy or the Consultant/Professional's ill health; and
- (c) nothing has materially changed with regards to the Project/Statement of Work or the Services which would precipitate the Consultant/Professional or Consultancy Organisation to not complete the Project/Statement of Work

then the MSP shall endeavour to find a replacement at no extra cost to the Contracting Authority for the balance of the originally anticipated contract period and if a replacement cannot be found within a reasonable period of time as judged solely by the Contracting Authority, and communicated to the MSP with reasonable notice, the MSP shall promptly refund all of the Day Rate and MSP Fee paid by the Contracting Authority on a pro rata basis relating to the time of the original contract remaining.

13.2.26 The MSP and the Contracting Authority shall ensure that all Consultant/Professionals and Consultancy Organisations provided to a Contracting Authority remain at all times the contractors of the MSP and do not become employees of the Contracting Authority and / or YPO.

13.2.27 For the avoidance of doubt, all Project/Statement of Work Deliverables and outcomes will be set by the Contracting Authority and agreed with the MSP and Consultant/Professional or Consultancy Organisation. The Contracting Authority will report to the MSP if any outcomes or Milestones are not being met. The MSP will remain at all times responsible for the overall delivery of the Service.

13.2.28 Subject to Clauses **Error! Reference source not found.**, 43.12 and 45, the MSP shall accordingly indemnify and hold each Contracting Authority and YPO harmless against all Liabilities arising out of or in connection with clauses 13.2.26.

### 13.3 **Dispute Resolution**

13.3.1 Without prejudice to Clause 57 of this Contract, in the event of a dispute between MSPs concerning a Consultant/Professional's or Consultancy Organisations representation, the MSP who first submitted the Consultant/Professional's or Consultancy Organisations Proposal to the Contracting Authority for the specific Project/Statement of Work in question, will have ownership over the Consultant/Professional or Consultancy Organisations on the assumption the MSP had the express permission of the Consultant/Professional or Consultancy Organisations to submit their Proposal at the time.

### 13.4 **MSP Non-Solicitation**

13.4.1 The MSP and the Contracting Authority (on behalf of itself and its employees) undertakes that during the period of this Agreement and for six months after termination, it will:

- (a) not canvass nor solicit for direct or indirect employment any personnel including employees of the other Party; and
- (b) not solicit or encourage the other Party'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.

13.4.2 The MSP (on behalf of itself and its employees) undertakes that during any Project/Statement of Work, it will:

- (a) not canvass nor solicit for direct or indirect employment the Consultant/Professional or individual from the Consultancy Organisation undertaking the Project/Statement of Work; and
- (b) not solicit or encourage a Consultant/Professional or individual from the Consultancy Organisation during the completion of their Project/Statement of Work to leave its employ, nor recommend them to any third party that might result in an approach to the Consultant/Professional or individual from the Consultancy Organisation to leave.

13.4.3 The MSP acknowledges and agrees that no fee shall be payable should the MSP introduce a current employee of the Contracting Authority to one of its group companies. The MSP undertakes that it shall immediately inform the Contracting Authority in the event that one of its employee's pass details of another group company's Employee, Consultant/Professional or individual from the Consultancy Organisation to the MSP.

13.4.4 In the event a Contracting Authority or MSP Employee approaches the other Party either directly or in response to an advertisement, the Contracting Authority or MSP is free to work with that employee provided they keep written evidence from the employee that they initiated the approach.

13.4.5 A Consultant/Professional or any individual at a Consultancy Organisation cannot be prevented from applying for any publicly advertised roles at the Contracting Authority.

#### **14. MANNER OF PROVIDING SERVICES**

- 14.1 The MSP shall at all times comply with the relevant legislation, codes of conduct and regulations governing the provision of Services.
- 14.2 Where applicable the MSP 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 Contract the MSP shall agree the relevant standard of the Services with the Contracting Authority prior to the provision of the Services, and in any event the MSP shall perform its obligations under the Contract in accordance with the Law, Good Industry Practice and any relevant regulations or legislation.
- 14.3 The MSP 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.
- 14.4 The MSP shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation Authority.

#### **15. CONTRACT PERFORMANCE**

- 15.1 In supplying the Services, the MSP shall perform its obligations under the Contract:

15.1.1 with appropriately experienced, accredited, qualified and trained Staff with all due care and attention; and

15.1.2 in a timely manner;

15.1.3 in compliance with applicable Laws.

15.2 The MSP shall ensure that:

15.2.1 the Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement;

15.2.2 the Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;

15.2.3 the Services conform in all respects with all applicable Laws; and

15.2.4 the MSP 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.

15.3 The MSP must be committed to delivering continuous improvement of the Services, process and all systems which are in place.

## **16. MSP DELIVERY TEAM**

16.1 The Parties have agreed to the appointment of the MSP's Delivery Team. The Provider shall inform the Contracting Authority within ten (10) Working Days or as soon as reasonably possible of any changes to their MSP Delivery Team and shall ensure that a meeting is arranged between the Parties to establish a good working relationship with the new member of the MSP Delivery Team.

16.2 The MSP acknowledges that the MSP Delivery Team are essential to the proper provision of the Services to the Contracting Authority. The MSP shall ensure that the role of any MSP Delivery Team 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 member of the MSP Delivery Team whom he or she has replaced.

16.3 The Contracting Authority may also require the MSP to remove any member of the MSP Delivery Team that the Contracting Authority (acting reasonably at all times) considers in any respect unsatisfactory. The Contracting Authority shall not be liable for the cost of removing and/or replacing any member of the MSP Delivery Team.

## **17. MSP'S STAFF**

17.1 The Contracting Authority may, by written notice to the MSP, refuse to admit onto, or withdraw permission to remain on, the Premises: -

17.1.1 any member of the Staff; or

17.1.2 any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Contracting Authority, be undesirable.

17.2 The MSP'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.

- 17.3 The decision of the Contracting Authority as to whether any person is to be refused access to the Premises shall be final and conclusive.
- 17.4 The MSP shall comply with the Staff Vetting Procedures in respect of all MSP Staff employed or engaged by the MSP 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 PROJECT/STATEMENT OF WORK PRICE**

### **18. PROJECT/STATEMENT OF WORK PRICE**

- 18.1 In consideration of the MSP's performance of its obligations under the Contract, the Contracting Authority shall pay the Project/Statement of Work Price in accordance with Clause 19 (Payment and VAT).
- 18.2 Each individual payment which makes up the Project/Statement of Work Price will become due once each corresponding Milestone has been met. All Milestones will be agreed between the Contracting Authority and the MSP prior to the commencement of a Project/Statement of Work.
- 18.3 The Contracting Authority shall, in addition to the Project/Statement of Work Price and following evidence of a valid VAT invoice, pay the MSP a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 18.4 Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the MSP will be allowed for any addition to the Project/Statement of Work Price on the grounds of any matter relating to any document forming part of the Framework Agreement, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced MSP could have satisfied himself by reference to the Contracting Authority or any other appropriate means.

### **19. PAYMENT AND VAT**

- 19.1 The Contracting Authority shall pay all sums due to the MSP in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile and agreed Milestone payments set out in the Order Form.
- 19.2 The MSP shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Contracting Authority to substantiate the invoice.
  - 19.3 The MSP shall ensure that they shall pay their Consultant/Professionals or Consultancy Organisation where no payment timescales are indicated within their sub-contract within 5 working days of the MSP receiving payment from the Contracting Authority.
- 19.4 The MSP shall add VAT to the Project/Statement of Work Price at the prevailing rate as applicable.
- 19.5 The MSP shall indemnify YPO and the Contracting Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Contracting Authority at any time in respect of the MSP's failure to account for or to pay any VAT relating to payments made to the MSP under the Contract. Any amounts due under this Clause 19.5 shall be paid by the MSP to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Authority.

19.6 The MSP shall not suspend the supply of the Services unless the MSP is entitled to terminate the Contract under Clause 48 (Termination) for failure to pay undisputed sums of money.

## **20. SET OFF**

20.1 The MSP shall not be entitled to retain or set-off any amount due to the Contracting Authority by it but the Contracting Authority may retain or set-off any amount owed to it by the MSP under this Contract which has fallen due and payable against any amount due to the MSP under this Contract.

20.2 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.

## **21. RECOVERY OF SUMS DUE**

21.1 Wherever under the Contract any undisputed sum of money is recoverable from or payable by the MSP (including any sum which the MSP is liable to pay to the Contracting Authority in respect of any breach of the Contract), the Contracting Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the MSP under the Contract or under any other agreement or contract with the Contracting Authority.

21.2 Any overpayment by either Party, whether of the Project/Statement of Work Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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

21.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **22. EURO**

22.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the MSP free of charge to the Contracting Authority.

22.2 The Contracting Authority shall provide all reasonable assistance to facilitate compliance with Clause 22.1 by the MSP.

## **STATUTORY OBLIGATIONS AND REGULATIONS**

### **23. PREVENTION OF BRIBERY AND CORRUPTION**

23.1 The MSP:

23.1.1 has not, will not, and will procure that its Staff, Consultant/Professional or Consultancy Organisation have not, and will not commit a Prohibited Act in connection with this Contract;

23.1.2 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

23.1.3 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 YPO or the Contracting Authority or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Contracting Authority, excluding any

arrangements of which full details have been disclosed in writing to YPO and/or the Contracting Authority prior to the execution of this Contract

- 23.2 The MSP will upon request provide the Contracting Authority with all reasonable assistance to enable the Contracting Authority to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Contracting Authority by any relevant government or agency in any relevant jurisdiction. Should the Contracting Authority request such assistance the Contracting Authority shall pay the reasonable expenses of the MSP arising as a result
- 23.3 The MSP will provide to the Contracting Authority certification (if requested to do so), in writing in such form as may be provided by the Contracting Authority, to be signed by an officer of the MSP, to confirm to the best of their knowledge, of the compliance with this Clause 23 by:
- 23.3.1 the MSP and
  - 23.3.2 all persons associated with the MSP; and
  - 23.3.3 any other persons who are supplying Services in connection with this Contract.
- 23.4 Certification (if requested) will be provided by the Contracting Authority within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The MSP will provide any evidence of compliance as may reasonably be requested by the Contracting Authority.
- 23.5 The MSP 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 Contracting Authority and enforced by the MSP where appropriate.
- 23.6 Should the MSP become aware of or suspect any breach of Clause 23.1 it will notify the Contracting Authority immediately.
- 23.7 Following notification under Clause 23.6 the MSP will respond promptly and fully to the enquiries of the Contracting Authority, cooperate with any investigation undertaken by the Contracting Authority and allow the Contracting Authority to audit any books, records and other relevant documentation. The MSP's obligations under this Clause 23.7 shall survive the expiry or termination of this Contract for a further period of six (6) years.
- 23.8 The Contracting Authority may recover in full from the MSP and the MSP shall indemnify the Contracting Authority in full from and against any other loss sustained by the Contracting Authority in consequence of any breach of this Clause 23 by the MSP (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.
- 23.9 The Contracting Authority may terminate this Contract and any Order immediately upon serving written notice if the MSP or its Staff whether or not acting with the MSP's knowledge, breaches Clause 23. Before exercising its right of termination under this Clause 23.9 the Contracting Authority will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 23.9.1 the MSP or a senior officer of the MSP; or
  - 23.9.2 a member of Staff who is not acting independently of the MSP. The expression 'not acting independently of' (when used in relation to the MSP or its Staff) means and shall be construed as acting:
    - (a) with the authority of; or
    - (b) with the actual knowledge; of any one or more of the MSP's or Staff (as applicable) directors or partners or

- (c) in circumstances where any one or more of the directors (or partners) of the MSP or its Staff (as applicable) ought reasonably to have had knowledge

23.10 Any notice of termination by the Contracting Authority under Clause 23.9 must specify:

23.10.1 The nature of the Prohibited Act; and

23.10.2 The identity of the person whom the Contracting Authority believes has committed the Prohibited Act; and

23.10.3 The date on which the Contract will terminate

23.11 In the event of any breach of Clause 23 the Contracting Authority is entitled to recover from the MSP the value of any gift, consideration or commission.

23.12 Notwithstanding Clause 57 (Dispute Resolution) any dispute relating to:

23.12.1 the interpretation of this Clause 23 or

23.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Contracting Authority and its decision shall be final and conclusive

23.13 Termination under Clause 23.9 will:

23.13.1 Be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Authority under this Contract;

23.13.2 prohibit the MSP from claiming any damages for early termination;

23.13.3 allow the Contracting Authority to recover from the MSP the amount of any loss suffered by the Contracting Authority resulting from the termination (subject to Clause **Error! Reference source not found.**); and

23.13.4 entitle the Contracting Authority to be indemnified by the MSP for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Services from another party (subject to Clause **Error! Reference source not found.**).

23.14 For the avoidance of doubt the MSP must ensure that the Consultant/Professional and Consultancy Organisation comply with the obligations of this Clause 23.

## **24. DISCRIMINATION**

24.1 The MSP 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).

24.2 The MSP shall take all reasonable steps to secure the observance of Clause 24.1 by all its Staff and servants, employees, or agents of the MSP and all MSPs and Staff employed in the execution of the Contract.

## **25. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999**

25.1 A person who is not a Party to the 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.

## **26. ENVIRONMENTAL REQUIREMENTS**

26.1 The MSP shall, when working on the Premises, perform its obligations under the Contract in accordance with the Contracting Authority'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.

## **27. HEALTH AND SAFETY**

- 27.1 The MSP shall promptly notify the Contracting Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Contracting Authority shall promptly notify the MSP of any health and safety hazards which may exist or arise at the Premises and which may affect the MSP in the performance of its obligations under the Contract.
- 27.2 While on the Premises, the MSP shall comply with any health and safety measures implemented by the Contracting Authority in respect of Staff and other persons working there.
- 27.3 The MSP shall notify the Contracting Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 27.4 Both Parties 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 Contract.
- 27.5 The MSP 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 Contracting Authority on request

## **PROTECTION OF INFORMATION**

### **28. DATA PROTECTION**

- 28.1 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.
- 28.2 Both Parties shall:
- (a) process the Personal Data in order to perform its obligations under this Call Off Contract;
  - (b) 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;
  - (c) 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)
  - (d) take reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that the Staff:
    - (i) are aware of and comply with the Call Off Contract;
    - (ii) 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

- (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) 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:
  - (i) 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 the its's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) 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;
- (f) 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:
  - (i) each other with full details and copies of the complaint, communication or request;
  - (ii) 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
  - (iii) the other, on request, with any Personal Data it holds in relation to a Data Subject; and
- (g) 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 28 and provide copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

28.3 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 Consultant/Professional 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:

- (a) 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;
- (b) the requesting Party shall set out in its proposal to the other for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Consultant/Professionals or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) 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;

- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Contracting Authority, 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
- (d) the Parties shall comply with such other instructions and shall carry out such other actions required to comply with Data Protection Legislation, including:
  - (i) 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
  - (ii) procuring that any Consultant/Professional or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (1) a direct data processing agreement with the Data Controller on such terms as may be required by them; or
    - (2) a data processing agreement with the Data Processor on terms which are equivalent to those agreed between the Data Controller and the Consultant/Professional relating to the relevant Personal Data transfer, and
  - (iii) 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 Contracting Authority deems necessary for the purpose of protecting Personal Data.

28.4 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.

28.5 Both Parties shall designate a data protection officer if required by the Data Protection Legislation.

28.6 Before allowing any Sub-Processor to process any Personal Data related to this Call Off Contract, the Data Processor shall:

- (a) notify the Data Controller in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Data Controller;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 28 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.

28.7 The Data Processor shall remain fully liable for all acts or omissions of any Sub-Processor.

## **29. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

29.1 The MSP acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Contracting Authority to enable them to comply with its Information disclosure obligations

29.2 The MSP shall and shall procure that its Staff shall:

29.2.1 transfer to the Contracting Authority 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;

29.2.2 provide the Contracting Authority with a copy of all Information in its possession or power in the form that the Contracting Authority requires within five (5) Working Days (or such other period as the Contracting Authority may specify) of the Contracting Authority's request; and

29.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority 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.

29.3 The Contracting Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this 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.

29.4 In no event shall the MSP respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.

29.5 The MSP acknowledges that (notwithstanding the provisions of Clause 29.2) the Contracting Authority 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 MSP of the Services:

29.5.1 in certain circumstances without consulting the MSP; or

29.5.2 following consultation with the MSP and having taken their views into account;

29.5.3 provided always that where Clause 29.2 applies the Contracting Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the MSP advanced notice, or failing that, to draw the disclosure to the MSP's attention after any such disclosure.

29.6 The MSP shall ensure that all Information is retained for disclosure and shall permit the Contracting Authority to inspect such records as requested from time to time.

29.7 The MSP acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Contracting Authority may be obliged to disclose it in accordance with Clause 29.5

### **30. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

30.1 The Supplier shall comply with and shall ensure that its Staff and Consultant/Professionals and Consultancy Organisations comply with, the provisions of:

30.1.1 the Official Secrets Acts 1911 to 1989; and

30.1.2 Section 182 of the Finance Act 1989

30.2 In the event that the Supplier or its Staff, Consultant/Professionals or Consultancy Organisations fail to comply with this Clause, the Contracting Authority reserves the right to terminate the Contract by giving notice in writing to the Supplier.

### **31. CONFIDENTIAL INFORMATION**



- 31.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
  - 31.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 31.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 31.2 Clause 31.1 shall not apply to the extent that:
  - 31.2.1 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 29 (Freedom of Information);
  - 31.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 31.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 31.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 31.2.5 it is independently developed without access to the other party's Confidential Information.
- 31.3 The MSP may only disclose the Contracting Authority'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.
- 31.4 The MSP shall not, and shall procure that its Staff do not, use any of the Contracting Authority's Confidential Information received otherwise than for the purposes of this Contract
- 31.5 At the written request of the Contracting Authority, the MSP shall procure that those members of the Staff identified in the Contracting Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 31.6 Nothing in this Contract shall prevent the Contracting Authority from disclosing the MSP's Confidential Information:
  - 31.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - 31.6.2 to any consultant or other person engaged by the Contracting Authority or any person conducting a gateway review;
  - 31.6.3 for the purpose of the examination and certification of the Contracting Authority's accounts;
  - 31.6.4 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 Contracting Authority of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.
- 31.7 The Contracting Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Consultant/Professional to whom the MSPs Confidential Information is disclosed pursuant to Clause 31.6 is made aware of the Contracting Authority's obligations of confidentiality.
- 31.8 Nothing in this Clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the

extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

31.9 The MSP shall not without the prior written consent of the Contracting Authority divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.

31.10 In the event that the MSP fails to comply with this Clause 30 the Contracting Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

31.11 The provisions of this Clause 31 shall apply notwithstanding termination of the Contract.

## **32. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

32.1 The MSP and the Consultant/Professional shall not make any press announcements or publicise the Contract in any way without the Contracting Authority's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 32.1.

32.2 The Contracting Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Contracting Authority, including any examination of the Contract by the Auditor.

32.3 The MSPs shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

## **33. SECURITY**

33.1 The Contracting Authority shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The MSPs shall comply with all reasonable security requirements of the Contracting Authority while on the premises and shall ensure that all Staff comply with such requirements.

33.2 The Contracting Authority shall provide to the MSP upon request copies of its written security procedures and shall afford the MSP upon request an opportunity to inspect its physical security arrangements.

## **34. INTELLECTUAL PROPERTY RIGHTS**

34.1 Save as granted elsewhere under the Contract, neither the Contracting Authority nor the MSP shall acquire any right, title or interest in the other's Pre-Existing IPR.

34.2 The MSP shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Contracting Authority Pre-Existing IPR or the Project Specific IPRs to any third party.

34.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Contracting Authority. The MSP hereby assigns to the Contracting Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

34.4 The assignment under Clause 34.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

34.5 The MSP shall waive or procure a waiver of any moral rights in any copyright works assigned to the Contracting Authority under the Contract.

34.6 If requested to do so by the Contracting Authority, the MSP shall without charge to the Contracting Authority execute all documents and do all such further acts as the Contracting Authority may require to perfect the assignment under Clause 34.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

- 34.7 The Contracting Authority hereby grants to the MSP a non-exclusive, revocable, non-assignable licence to use the Contracting Authority Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the MSP to supply the Services and/or supply the Deliverables.
- 34.8 Where the MSP is granted Approval by the Contracting Authority to use the third-party rights, the MSP shall procure that the owner of third-party rights grants to the Contracting Authority a licence upon the terms informed to the Contracting Authority when seeking the Approval.
- 34.9 The MSP shall, during and after the Contract Period and subject to Clause **Error! Reference source not found.**, indemnify and keep indemnified and hold the Contracting Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Authority may suffer or incur as a result of any claim that the performance by the MSP of the Services and/or supply of the Deliverables and/or the possession or use by the Contracting Authority of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 34.9.1 items or materials based upon designs supplied by the Contracting Authority; or
- 34.9.2 the use of data supplied by the Contracting Authority which is not required to be verified by the MSP under any provision of the Contract.
- 34.10 The Contracting Authority shall notify the MSP in writing of the Claim and the Contracting Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The MSP shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the MSP:
- 34.10.1 shall consult the Contracting Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 34.10.2 shall take due and proper account of the interests of the Contracting Authority; and
- 34.10.3 shall not settle or compromise the Claim without the Contracting Authority's prior Approval (not to be unreasonably withheld or delayed).
- 34.11 If a Claim is made in connection with the Contract or in the reasonable opinion of the MSP is likely to be made, the MSP shall immediately notify the Contracting Authority and, at its own expense and subject to the consent of the Contracting Authority (not to be unreasonably withheld or delayed), use its best endeavours to: -
- 34.11.1 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
- 34.11.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Contracting Authority,
- 34.12 In the event that the MSP is unable to comply with Clauses 34.11.1 or 34.11.2 within twenty (20) Working Days of receipt of the MSP's notification the Contracting Authority may terminate the Contract with immediate effect by notice in writing and the MSP shall, upon demand, refund the Contracting Authority with all monies paid in respect of the Services or Deliverable that is subject to the Claim.
- 34.13 In the event that a modification or substitution in accordance with Clause 34.11.1 is not possible so as to avoid the infringement, or the MSP has been unable to procure a licence in

accordance with Clause 34.11.2 the Contracting Authority shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.

34.14 This Clause 34 sets out the entire financial liability of the MSP 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 MSP's financial liability for other Defaults or causes of action that may arise hereunder.

## **35. RECORDS AND AUDIT ACCESS**

35.1 The MSP, Consultant/Professional or Consultancy Organisation shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including, the Services supplied under it, the Call-Off Contracts entered into with YPO and each individual Contracting Authority and the amounts paid by each Contracting Authority.

35.2 The MSP, Consultant/Professional or Consultancy Organisation shall keep the records and accounts referred to in Clause 35.1 above in accordance with good accountancy practice.

35.3 The MSP shall on request provide such records and accounts (together with copies of the MSP's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Contracting Authority, the Contracting Authority's representatives and/or the Auditor as may be required from time to time.

35.4 The Contracting Authority shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the MSP, Consultant/Professional or Consultancy Organisation or delay the provision or supply of Services save insofar as the MSP accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Contracting Authority.

35.5 Subject to the Contracting Authority's rights of Confidential Information, the MSP, Consultant/Professional or Consultancy Organisation shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including: -

35.5.1 all information requested by the Contracting Authority within the scope of the audit;

35.5.2 reasonable access to sites controlled by the MSP and to Equipment used in the provision of the Services; and

35.5.3 access to the Staff.

35.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 35, unless the audit reveals a Material Default by the MSP, Consultant/Professional or Consultancy Organisation in which case the MSP shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit.

## **CONTROL OF THE CONTRACT**

### **36. TRANSFER AND SUB-CONTRACTING**

36.1 The MSP shall not assign, novate or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the MSP of any obligation or duty attributable to the MSP under the Contract.

36.2 The MSP shall not be entitled to sub-contract any of its rights or obligations under this Contract without the express prior written consent of the Contracting Authority (such consent not to be unreasonably withheld or delayed). For the avoidance of doubt, the MSP is entitled to sub-contract any of its obligations under this Contract without the express prior written consent of

YPO to any Consultant/Professional or Consultancy Organisation being used to complete a Project/Statement of Work, providing that the MSP has complied with the Clauses of this Contract and the Framework Agreement in relation to Consultant/Professionals or Consultancy Organisations and the relevant processes and checks.

- 36.3 The MSP shall be responsible for the acts and omissions of its Consultant/Professional or Consultancy Organisation as though they are it's the actions and or omissions of its own Staff.
- 36.4 The MSP shall ensure that all relevant obligations within the Framework Agreement and Call-Off Contract are flowed down to the Consultant/Professional or Consultancy Organisation via the sub-contract between the MSP and Consultant/Professional or Consultancy Organisation.
- 36.5 Where the Contracting Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Contracting Authority, be sent by the MSP to the Contracting Authority as soon as reasonably practicable.
- 36.6 Subject to Clause 36.8, the Contracting Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

36.6.1 any Contracting Authority; or

36.6.2 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 Contracting Authority; or

36.6.3 any private sector Authority which substantially performs the functions of the Contracting Authority,

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

- 36.7 Any change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 36.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Contracting Authority.
- 36.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 36.6 to a Authority which is not a Contracting Authority or if there is a change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):
- 36.8.1 the rights of termination of the Contracting Authority in Clause 48 shall be available to the MSP in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- 36.8.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the MSP.
- 36.9 The Contracting Authority may disclose to any Transferee any Confidential Information of the MSP which relates to the performance of the MSP's obligations under the Contract. In such circumstances the Contracting Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the MSP's obligations under the 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.
- 36.10 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 Contract.

### **37. WAIVER**

- 37.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 37.2 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).
- 37.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

### **38. VARIATION**

- 38.1 Subject to the provisions of this Clause 38.1, the Contracting Authority may request a variation to Services ordered provided that such variation does not amount to a material change to the Order (as determined by both the Contracting Authority and the MSP). Such a change is hereinafter called a "Variation".
- 38.2 The Contracting Authority may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 ("**the Variation Form**") to the MSP giving sufficient information for the MSP to assess the extent of the Variation and any additional cost that may be incurred. The MSP shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 38.3 In the event that the MSP is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Project/Statement of Work Price, the Contracting Authority may:
  - 38.3.1 agree to allow the MSP to continue to perform their obligations under the Contract without the Variation; or
  - 38.3.2 terminate the Contract with immediate effect, except where the MSP has already delivered part or all of the Order in accordance with the Order Form or where the MSP 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 57.
  - 38.3.3 If the Parties agree the Variation and any variation in the Project/Statement of Work Price, the MSP shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

### **39. SEVERABILITY**

- 39.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 39.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Contracting Authority and the MSP shall immediately commence good faith negotiations to remedy such invalidity.

### **40. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES**

- 40.1 Where a complaint is received about the manner in which any Services have been supplied or work or a Project/Statement of Work has been performed or about the procedures used or about any other matter connected with the performance of the MSP's obligations under the Contract, then the Contracting Authority shall take all reasonable steps to investigate the complaint. The Contracting Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 48 (Termination) of the Contract.
- 40.2 In the event that the Contracting Authority is of the reasonable opinion that there has been a material breach of the Contract by the MSP, then the Contracting Authority may, without prejudice to its rights under Clause 48 (Termination), do any of the following:
- 40.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the MSP shall have demonstrated to the reasonable satisfaction of the Contracting Authority that the MSP will once more be able to supply all or such part of the Services in accordance with the Contract;
  - 40.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Project/Statement of Work Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - 40.2.3 terminate, in accordance with Clause 48 (Termination), the whole of the Contract; and/or
  - 40.2.4 subject to Clause **Error! Reference source not found.**, charge the MSP for or and the MSP shall pay any costs reasonably incurred by the Contracting Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Contracting Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the MSP for such part of the Services and provided that (i) the MSP has been given a reasonable opportunity to perform the Services prior to the Contracting Authority performing them or engaging a third party, and (ii) the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 40.3 If the MSP fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Authority shall instruct the MSP to remedy the failure and the MSP shall at its own cost and expense remedy such failure (and any damage resulting from such failure), subject to Clause **Error! Reference source not found.**, within ten (10) Working Days of the Contracting Authority's instructions or such other period of time as the Contracting Authority may direct.
- 40.4 In the event that the MSP
- 40.4.1 fails to comply with Clause 40.3 above and the failure is materially adverse to the interests of the Contracting Authority or prevents the Contracting Authority from discharging a statutory duty; or
  - 40.4.2 persistently fails to comply with Clause 40.3 above

the Contracting Authority may terminate the Contract with immediate effect by giving the MSP notice in writing.

#### 41. CUMULATIVE REMEDIES

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

## **42. MONITORING OF CONTRACT PERFORMANCE**

- 42.1 The MSP shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the MSP may be required to produce under the Contract.

## **LIABILITIES**

### **43. LIABILITY, INDEMNITY AND INSURANCE**

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

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

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

43.1.3 any breach of any obligations implied by Section 12 of the Sale of Services Act 1979; or

- 43.2 Subject to Clause 43.3 and Clause 43.4, the MSP shall indemnify and keep indemnified the Contracting Authority in full from and against all claims, proceedings, actions, damages, reasonable costs, expenses and any other liabilities which may arise out of, or in consequence of, the negligent supply, or late or purported supply, of the Services by the MSP of its obligations under the Contract, including loss of or damage to property, financial loss arising from any advice given or omitted to be given by the MSP, or any other loss which is caused directly by any act or omission of the MSP or its Staff. The MSP 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 Contracting Authority or by breach by the Contracting Authority of its obligations under the Contract.

- 43.3 Subject always to Clause 43.4 and Clause 43.5, the liability of either Party for defaults shall be subject to the following financial limits:

43.3.1 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 Contract shall in no event exceed 125% of the Project/Statement of Work Price payable by the Contracting Authority to the MSP in the year in which the liability arises; and

43.3.2 the annual aggregate liability under the Contract of either Party for all other defaults shall in no event exceed 125% per cent of the Project/Statement of Work Price payable by the Contracting Authority to the MSP in the year in which the liability arises.

- 43.4 Subject to Clause 43.1, in no event shall either Party be liable to the other for any:

43.4.1 loss of profits;

43.4.2 loss of business;

43.4.3 loss of revenue;

43.4.4 loss of or damage to goodwill;

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

43.4.6 any indirect or consequential loss or damage

- 43.5 The Contracting Authority may, amongst other things, recover as a direct loss:



- 43.5.1 any additional operational and/or administrative expenses arising from the MSP's Default;
  - 43.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Authority arising from the MSP's default; and
  - 43.5.3 the additional cost of procuring replacement Services for the remainder of the Contract Period following termination of the Contract as a result of a default by the MSP.
- 43.6 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the MSP to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Authority to the MSP that may arise by virtue of either a breach of the Contract or by negligence on the part of the Contracting Authority, or the Contracting Authority's employees, servants or agents.
- 43.7 The MSP shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by the MSP, arising out of the MSP's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the MSP. 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 Contract.
- 43.8 The MSP shall affect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement and Contract: -
- 43.8.1 public liability insurance with a minimum limit of indemnity of £10,000,000 (ten million pounds) for each individual.
  - 43.8.2 employer's liability insurance with a minimum limit of indemnity of £10,000,000 (ten million pounds) for each individual claim; and
  - 43.8.3 professional indemnity insurance with a minimum limit of indemnity of £5,000,000 (five million pounds) for each individual claim (and as required by law or best industry practice) from time to time.
- 43.9 The MSP shall give the Contracting Authority, on request, copies of all insurance policies referred to in this clause or a brokers 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.
- 43.10 If, for whatever reason, the MSP fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the MSP.
- 43.11 The provisions of any insurance or the amount of cover shall not relieve the MSP of any liabilities under the Contract. It shall be the responsibility of the MSP to determine the amount of insurance cover that will be adequate to enable the MSP to satisfy any liability referred to in Clause 43.
- 43.12 Excluding where the Contracting Authority directly causes the below cost, liability, demand or expense, the MSP shall indemnify the Contracting Authority, and shall be able to produce evidence of the same indemnity from the MSPs Consultant/Professionals 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 Contracting Authority in connection with any Project/Statement of Work under this Contract or Order Form including but not limited to:

43.12.1 The MSP failing to pay any Consultant/Professional in connection with providing Services under this Contract.

43.12.2 Any claim arising out of the MSP or its Consultant/Professionals failing to comply with their obligations both under this Contract and their legal obligations.

43.12.3 Any claim arising directly due to the MSP or its Consultant/Professionals failing to disclose information reasonably requested in relation to any Consultants in connection with providing Services under this Contract.

#### **44. PROFESSIONAL INDEMNITY**

44.1 The MSP shall affect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and Consultant/Professionals 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 MSP shall ensure professional indemnity insurance held by the MSP and by any agent or Consultant/Professional involved in the supply of the Services has a limit of indemnity of not less than the sum set out in the Invitation to Tender for the Framework Agreement and for each individual claim or such higher limit as the Contracting Authority 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 Contract.

#### **45. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

45.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. Subject to Clause 43.3, the MSP shall at all times indemnify the Contracting Authority and keep the Contracting Authority 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 Contracting Authority 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 and to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract. This indemnity shall not apply where the Contracting Authority has treated any Staff as its employees or where any Staff become employees of the Contracting Authority under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

45.2 For the avoidance of doubt the responsibility of IR35 will sit with the Contracting Authority with support from the MSP.

#### **46. WARRANTIES AND REPRESENTATIONS**

46.1 The MSP warrants and represents that:

46.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

46.1.2 the Contract is executed by a duly authorised representative of the MSP;

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

46.1.4 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 Contracting Authority prior to execution of the Contract and it will advise the Contracting Authority 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;

- 46.1.5 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 Contract;
  - 46.1.6 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 Contract;
  - 46.1.7 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 MSP 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 MSP's assets or revenue;
  - 46.1.8 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are the Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
  - 46.1.9 necessary for the performance of its obligations under the Contract;
- 46.2 in the three (3) years prior to the date of the Contract:
- 46.2.1 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;
    - 46.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - 46.2.3 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 Contract.

## **DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION**

### **47. SUSPENSION**

- 47.1 Without prejudice to the Contracting Authority's right to terminate the Contract in Clause 48 below, the Contracting Authority, acting reasonably at all times, may suspend the MSP's appointment to supply Services by giving notice in writing to the MSP. If the Contracting Authority provides notice to the MSP in accordance with this Clause 47, the MSP's appointment shall be suspended for the period set out in the notice or such other period notified to the MSP by the Contracting Authority in writing from time to time.
- 47.2 A MSP's Appointment may be suspended to allow YPO and/or a Contracting Authority 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 MSP will be suspended (at no cost to YPO or the Contracting Authority) whilst investigations take place. Any Orders already placed during this period shall be put on hold pending the outcome.
- 47.3 Following suspension of a MSP's appointment under this Clause 47 the MSP will be informed of the outcome as soon as possible and be advised whether or not they the Contract has been terminated with immediate effect.

### **48. TERMINATION**

## **Termination - Insolvency and Change of Control**

- 48.1 The Contracting Authority may terminate the Contract with immediate effect by giving notice in writing where the MSP is a company and in respect of the MSP:
- 48.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - 48.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - 48.1.3 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;
  - 48.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - 48.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - 48.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
  - 48.1.7 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
  - 48.1.8 any event similar to those listed in Clause 48.1 occurs under the law of any other jurisdiction.
- 48.2 The Contracting Authority may terminate the Contract with immediate effect by notice in writing where the MSP is an individual and:
- 48.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the MSP's creditors;
  - 48.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the MSP's bankruptcy;
  - 48.2.3 a receiver, or similar officer is appointed over the whole or any part of the MSP's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
  - 48.2.4 the MSP 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;
  - 48.2.5 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 MSP's assets and such attachment or process is not discharged within fourteen (14) days;

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

48.2.7 the MSP suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

48.3 The MSP shall notify the Contracting Authority immediately if the MSP undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Contracting Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

48.3.1 being notified that a Change of Control has occurred; or

48.3.2 where no notification has been made, the date that the Contracting Authority 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.

48.4 The Contracting Authority may terminate the Contract with immediate effect by notice in writing where:

48.4.1 the MSP are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Services;

48.4.2 the MSP 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**

48.5 Where the MSP commits a Minor Default of the Contract, the Contracting Authority shall be entitled to issue the MSP with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Default and give the MSP a minimum of ten (10) Working Days to remedy the Minor Default.

48.6 If the MSP commits three (3) Minor Defaults in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 48.7.3.

#### **Termination on Default – Material Default**

48.7 The Contracting Authority may terminate the Contract by serving written notice on the MSP with effect from the date specified in such notice, where the MSP commits a Material Default and:

48.7.1 the MSP has not remedied the Material Default to the satisfaction of the Contracting Authority within twenty (20) Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied;

48.7.2 the Material Default is not, in the reasonable opinion of the Contracting Authority, capable of remedy;

48.7.3 if the MSP has committed three (3) or more Minor Defaults within a twelve (12) month rolling period;

48.7.4 where any Contracting Authority terminates a Call-Off Contract awarded to the MSP under this Contract as a consequence of a default by the MSP;

48.8 The MSP may terminate the Contract by serving written notice on the Contracting Authority with effect from the date specified in such notice, where the Contracting Authority commits a Material Default and:

48.8.1 the Contracting Authority has not remedied the Material Default to the satisfaction of the MSP within twenty (20) Working Days, or such other period as may be specified by the MSP, after issue of a written notice specifying the Material Default and requesting it to be remedied;

48.8.2 the Material Default is not, in the reasonable opinion of the MSP, capable of remedy;

48.9 If the Contracting Authority fails to pay the MSP undisputed sums of money when due, the MSP shall notify the Contracting Authority in writing of such failure to pay. If the Contracting Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the MSP may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Contracting Authority exercising its rights under Clause 21 (Recovery of Sums Due).

48.10 Any of the provisions in Regulation 73(1) of the Regulations apply.

#### **49. BREAK**

49.1 The Contracting Authority shall have the right to terminate the Contract at any time by giving three (3) Months written notice to the MSP.

#### **50. FRAMEWORK AGREEMENT**

50.1 The Contracting Authority may terminate the Contract by giving written notice to the MSP with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

#### **51. CONSEQUENCES OF EXPIRY OR TERMINATION**

51.1 Where the Contracting Authority terminates the Contract under Clause 48 and then makes other arrangements for the supply of Services, the Contracting Authority may recover from the MSP the cost (subject to Clause 43.3), reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period. The Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 48, no further payments shall be payable by the Contracting Authority to the MSP until the Contracting Authority has established the final cost of making those other arrangements.

51.2 Where the Contracting Authority terminates the Contract under Clause 49, the Contracting Authority shall indemnify the MSP against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the MSP by reason of the termination of the Contract, provided that the MSP takes all reasonable steps to mitigate such loss. Where the MSP holds insurance, the MSP shall reduce its unavoidable costs by any insurance sums available. The MSP shall submit a fully itemised and valued list of such loss, with supporting evidence, of losses reasonably and actually incurred by the MSP as a result of termination under Clause 49.

51.3 The Contracting Authority shall not be liable under Clause 51.2 to pay any sum which:

51.3.1 was claimable under insurance held by the MSP, and the MSP 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

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

51.4 Save as otherwise expressly provided in the Contract:

51.4.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

51.4.2 Within thirty (30) Working Days of the date of termination or expiry of the Contract, the MSP shall return to the Contracting Authority any data and Confidential Information belonging to the Contracting Authority that is in the MSP's possession, power or control, either in its then current format or in a format nominated by Contracting Authority, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Contracting Authority, 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 Contract, or such period as is necessary for such compliance.

51.4.3 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the MSP under Clauses 19 (Payment and VAT), 21 (Recovery of Sums Due), 23 (Prevention of Bribery and Corruption), 28 (Data Protection Act), 29 (Freedom of Information), 30 (Confidential Information), 34 (Intellectual Property Rights), 35 (Records and Audit Access), 41 (Cumulative Remedies), 43 (Liability, Indemnity and Insurance), 44 (Professional Indemnity), 51 (Consequences of Expiry or Termination), 53 (Recovery upon Termination) and 55 (Governing Law).

**52. DISRUPTION**

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

52.2 The MSP shall immediately inform the Contracting Authority 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 Contract.

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

52.4 If the MSP's proposals referred to in Clause 52.3 are considered insufficient or unacceptable by the Contracting Authority acting reasonably then the Contract may be terminated with immediate effect by the Contracting Authority by notice in writing.

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

**53. RECOVERY UPON TERMINATION**

53.1 On the termination of the Contract for any reason, the MSP shall:

53.1.1 immediately return to the Contracting Authority all Confidential Information, Personal Data and Contracting Authority'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 MSPs or Consultant/Professional or Consultancy Organisation, which was obtained or produced in the course of providing the Services;

53.1.2 immediately deliver to the Contracting Authority all Property (including materials, documents, information and access keys) provided to the MSP under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear).

53.2 If the MSP fails to comply with Clause 53.1 the Contracting Authority may recover possession thereof and the MSP grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the MSP or its permitted MSPs or Consultant/Professionals where any such items may be held.

53.3 Where the end of the Contract Period arises due to the MSP's Default, the MSP shall provide all assistance under Clause 53.1 free of charge. Otherwise, the Contracting Authority shall pay the MSP's reasonable costs of providing the assistance and the MSP shall take all reasonable steps to mitigate such costs.

53.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 34 shall automatically terminate without the need to serve notice.

#### **54. FORCE MAJEURE**

54.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

54.2 Any failure or delay by the MSP in performing its obligations under the Contract which results from any failure or delay by an agent, Consultant/Professional or Consultancy Organisation shall be regarded as due to Force Majeure only if that agent, Consultant/Professional or Consultancy Organisation is itself impeded by Force Majeure from complying with an obligation to the MSP.

54.3 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 54.1 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.

54.4 It is expressly agreed that any failure by the MSP to perform or any delay by the MSP in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the MSP 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.

54.5 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**

#### **55. GOVERNING LAW**

55.1 The 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 Contract is to be governed exclusively by and construed under English law.

55.2 This Contract is binding on the Contracting Authority and its successors and assignees and the MSP and the MSP's successors and permitted assignees.



## **56. TUPE**

- 56.1 During the period of six (6) Months preceding the expiry of this Contract or after the Contracting Authority has given notice to terminate the Contract or the MSP stops trading, and within twenty (20) Working Days of being so requested by the Contracting Authority, the MSP shall fully and accurately disclose to the Contracting Authority, for the purposes of TUPE, all information relating to its Staff engaged in providing the Services under the Contract, in particular but not necessarily restricted to, the following:
- 56.1.1 the total number of Staff whose employment with the MSP is liable to be terminated at the expiry of the Contract but for any operation of law;
  - 56.1.2 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);
  - 56.1.3 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;
  - 56.1.4 details of pensions entitlements, if any; and
  - 56.1.5 job titles of the members of Staff affected and the qualifications required for each position.
- 56.2 The MSP shall permit the Contracting Authority to use the information for the purposes of TUPE and of re-tendering. The MSP 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.
- 56.3 Subject to Clause 43.3, the MSP agrees to indemnify the Contracting Authority 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 56.
- 56.4 In the event that the information provided by the MSP in accordance with Clause 56.1 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 MSP becoming aware that the information originally given was inaccurate, the MSP shall notify the Contracting Authority of the inaccuracies and provide the amended information.
- 56.5 The provisions of this Clause 56 shall apply during the continuance of the Contract and indefinitely after its termination.

## **57. DISPUTE RESOLUTION**

- 57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 57.2 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.
- 57.3 If the dispute cannot be resolved by the Parties pursuant to Clause 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 57.5 unless:
- 57.3.1 the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or

57.3.2 the MSP does not agree to mediation.

57.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the MSP and the Staff shall comply fully with the requirements of the Contract at all times.

57.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

57.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 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 MSP to appoint a Mediator;

57.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;

57.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

57.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

57.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

## APPENDIX 1

## ORDER FORM

## FRAMEWORK AGREEMENT (INSERT REF: 000940)

REF: UKRI-3364 Specialist Global Mobility - Consultancy Support

## FROM

<b>Contracting Authority</b>	United Kingdom Research and Innovation
<b>Address</b>	Polaris House, North Star Avenue, Swindon, England, SN2 1FL
<b>Invoice Address</b>	<p>All invoices should be sent, quoting a valid purchase order number (PO Number) provided by UKRI, to: UK Research and Innovation c/o UK SBS Ltd, Polaris House, North Star Avenue, Swindon, SN2 1FF.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your UKRI contact (i.e. Agreement Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to <a href="mailto:finance@uksbs.co.uk">finance@uksbs.co.uk</a> or by telephone 01793 867000 between 09:00-17:00 Monday to Friday.</p>
<b>Contact Ref:</b>	<p>Ref: <b>UKRI-3364</b></p> <p>Name: <b>Specialist Global Mobility - Consultancy Support</b></p> <p><b>Contract Management:</b></p> <p>Name: <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span>, Associate Director Reward</p> <p>Phone: <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p>Email: <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p><b>Commercial:</b></p> <p>Name: <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p>Phone: <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p>Email: <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p>

## TO

<b>MSP:</b>	Reed Specialist Recruitment Limited, trading as <b>Consultancy+</b> (Registered Company Number: 06903140)
<b>Address:</b>	Academy Court 64 Chancery Lane London WC2A 1DT
<b>Contact Details</b>	<p><span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span> (Delivery Consultant) - <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p><span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p><span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span> (Principal Consultant) - <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p> <p><span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span></p>

<b>MSP Team</b> (Names and Contact Details)	<b>Delivery</b>	As above
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<b>1. TERM</b>
<b>1.1 Effective Date (Commencement Date):</b>
1.1.1 This Contract shall commence on: 27 September 2023
<b>1.2 Expiry Date</b>
1.2.1 This Contract shall expire on: 26 September 2024
<b>1.3</b> Subject to the definition of Commencement Date in accordance with Clause 1 (Interpretation), of the YPO Framework Agreement the Parties agree that the terms and conditions of this Contract shall take effect from the Commencement Date stated herein".
<b>1.4</b> Where the Consultant Professional/Consultancy Organisation commences the delivery of the Services to the Contracting Authority, prior to the execution of this Contract, the Parties agree that the MSP shall not be liable for any Material Default which may have occurred and liability shall not be applied to the MSP, retrospectively.

<b>2. SERVICES</b>
<b>2.1 Services</b>
In accordance with Clause 12 (Supply of the Services) of the Call Off Terms and conditions, the MSP shall supply the Services to the Contracting Authority in accordance with the following process and provisions.
2.1.1 Overview of Service to be provided: As per attached:
<b>Annex 1 – UKRI-3364 Specification</b> <b>Annex 2 – Proposal</b>
2.2.3 Approval process for payment:
Via Consultancy+ MSP portal. Approval of pro-forma request confirms Authorities agreement to services delivered by the Supplier in order for Consultancy+ to make payment to the Supplier, and then invoice UKRI.
2.2.4 Escalation process for issues:
<u>Stage 1</u>
UKRI: Commercial Business Partner MSP: Principal Consultant, <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span>
<u>Stage 2</u>
UKRI: Head of Commercial MSP: Managing Consultant, <span style="background-color: black; color: red;">FOIA Section 40 Personal Information</span>
2.2.5 Roles and responsibilities of the Contracting Authority including contact details:

<p>FOIA Section 40 Personal Information - SRO FOIA Section 40 Personal Information - UKRI HR Project Co-ordinator</p> <p>2.2.6 Roles and responsibilities of the Consulting Organisation/ Consultant Professional:</p> <p>FOIA Section 40 Personal Information – Consulting Organisation Lead FOIA Section 40 Personal Information – Delivering Consultant FOIA Section 40 Personal Information – Delivering Consultant</p> <p>2.2.7 Project/implementation plan:</p> <p>Not applicable</p>
<p><b>2.2 Service Levels</b></p> <p><b>The MSP shall ensure that they meet or exceed the following Service Levels:</b></p> <p>As per UKRI-3364 Specification (Annex 1)</p>
<p><b>2.3 Base Location</b></p> <p>Polaris House, North Star Avenue, Swindon, England, SN2 1FL</p>
<p><b>2.4 IR35</b></p> <p>Subject to clause 45.2, the responsibility for determining Consultant Professional’s income tax status under the IR35 Rules will remain with the Contracting Authority with support from the MSP and the Contracting Authority shall ensure that a Status Determination Statement meets the requirements of section 61NA ITEPA and in which the Contracting Authority confirms its decision and the contracting Authority shall ensure that the Status Determination Statement is kept up to date and that the MSP is notified immediately if there is any change in the income tax status of the Consultant under the IR35 Rules.</p> <p>A. In accordance with clause 45.2 the responsibility for assessing IR35 status of each Consultant Professional remains with the Contracting Authority with support from the MSP and where the Contracting Authority provides a Status Determination Statement which indicates that the Consultant/Professional is Inside IR35, the MSP will calculate and pay any income tax, national insurance and Apprenticeship Levy due in relation to the Consultant Professional.</p> <p>B. The Parties agree that: the foregoing information may not apply to Contracting Organisations as they will as employers, already be performing this function as part of their payroll functions and obligations to HMRC for and behalf of their employees.</p>

<p><b>3. SECURITY AND VETTING</b></p>
<p><b>3.1 Security and Vetting Requirements</b></p> <p>In accordance with Clause 13.2.7 of the YPO 000940 Call Off Terms Conditions the MSP shall ensure that the Consultant /Professional is fully vetted, audited and ready to deliver the</p>

requirements relevant to their Consultancy area and any additional requirement the contracting Authority may have.

Where the Contracting Authority has any other or additional vetting requirements, the Contracting Authority shall inform the MSP in writing.

**4. AMMENDMENTS TO TERMS AND CONDITIONS**

(a)	The following Clause is added to the Call-Off Terms and Conditions:	Notwithstanding any other provision of the Contract, the Contracting Authority shall be responsible for its operation and use of the Deliverables and for determining whether to use or refrain from using any recommendation that may be made by or on behalf of the MSP. The Contracting Authority will be solely responsible for determining whether any Services provided by the MSP, the Consultancy Organisation and/or the Consultant/Professional (i) meet the Contracting Authority's requirements; (ii) comply with all laws and regulations applicable to the Contracting Authority; and (iii) comply with the Contracting Authority's applicable internal guidelines and any other agreements it has with third parties. Neither the MSP, the Consultancy Organisation or the Consultant/Professional will provide the Contracting Authority with any legal, regulatory, compliance or financial advice. The Parties acknowledge that the foregoing modification is required by the MSP's insurance provider, and agree that it does not change the economic balance of the Contract in favour of the MSP in a manner which was not provided for in the Framework.
(b)	The following clause is added to Clause 14.5 – Manner of Providing the Services, of the Call-Off Terms and Conditions	14.5. The Contracting Authority agrees that the Consultant/Professional's or Consultancy Organisations may comment upon the Contracting Authority's legal, construction, financial or other compliance documentation in the course of performing the Services as instructed in the Work Order, however, the Contracting Authority acknowledges that such comments or opinions are not the opinions of the MSP even if such comments have later been brought to the MSP's notice. The contracting Authority further acknowledges that where the Consultant/Professional or Consultancy Organisation provides comments or opinions pursuant to this clause 14.5, the contracting Authority shall consult with its own legal, financial, auditing, construction and regulatory advisors regarding any matters as appropriate and accepts that neither the MSP nor the Consultant/Professional or Consultancy Organisations shall indemnify the Contracting Authority where they knowingly or inadvertently rely on such comments or opinions as professional advice to its own detriment and hereby indemnifies the MSP against any claims pursuant to its use thereof.

**5. MILESTONE PROVISIONS**

5.1 Project/Statement of Work Price	Day rates:  FOIA Section 40 Personal Information – Delivering Consultant - FOIA Section 43 Commercial
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	<p>FOIA Section 40 Personal Information – Delivering Consultant - FOIA Section 43 Commercial</p> <p><b>The Total Charges under the Framework shall not exceed: £266,000 (excluding VAT).</b></p> <p>Consultant's time (including all fees) will be booked up to a maximum total value of £266,000 (inclusive of framework fees as and when required over the course of the contract.</p> <p>Please note the maximum total value is not a guarantee of spend.</p>
<p><b>5.2 Expenses recoverable</b></p>	<p>This will include any demonstrable and material additional costs or expenses the MSP may incur to enable it to provide the Contract Services, such as:</p> <ul style="list-style-type: none"> <li>- Mileage and parking</li> <li>- Equipment rental as recommended by the Contracting Authority</li> </ul> <p>UKRI will reimburse the Supplier at cost for all reasonable travel, subsistence and other expenses incurred by individuals engaged by the Supplier in providing the Services to UKRI, provided that UKRI's prior written approval is obtained before incurring any such expenses. All invoices for such expenses are to be accompanied by valid receipts. The Supplier must comply at all times with</p> <p>UKRI's expenses policy: UKRI travel, subsistence and expenses policy – UKRI (<a href="#">UKRI travel, subsistence and expenses policy – UKRI</a>).</p>
<p><b>5.3 Funding</b></p>	<p><b>N/A</b></p>
<p><b>5.4 Invoicing Arrangements</b></p>	<p>Subject to clause 13.2.20 of the YPO Terms and Conditions, where each Approval for Payment Notices, Timesheets or Proforma Invoices (all together, "payment notices) containing all appropriate references and a breakdown of the Services supplied have been presented to the Contracting Authority for approval, the Contracting Authority shall approve them in a timely manner to ensure the MSP can meet its obligation to pay Suppliers promptly in accordance with clauses 18 and 19 of the YPO Terms and Conditions and therefore:</p> <ol style="list-style-type: none"> <li>i. The Contracting Authority shall within 7 days of the receipt of an Approval for Payment Notice from the MSP, review and approve the request for payment.</li> <li>ii. The Contracting Authority shall approve submitted timesheets within two (2) days after the end of the week the time sheet refers to.</li> <li>iii. Subject to clause 13.2.20 of the Call Off Terms and Conditions, where the Contracting Authority delays approving payment requests, the MSP reserves the right to charge late payment fees based the current Bank of England base lending rate.</li> <li>iv. Following the approval for payment, the MSP will issue an invoice to the Contracting Authority for payment, which may also include the MSP fee.</li> </ol>

	<p>v. The Contracting Authority agrees to process for payment the invoice within the stipulated payment terms in clause 19.</p> <p>Where there is a dispute concerning the correct fees, the contracting Authority shall ensure they inform the MSP within two (2) days of the receipt of the Payment Notice and the Contracting Authority is here reminded that it is its responsibility to ensure that the correct amount of the fees is approved, as once approval is given, the MSP will not be liable for any mistakes in the amount or any delay to pay the Supplier and the foregoing shall in no event constitute a Material Default or trigger a breach of contract by the MSP.</p>
<b>5.5 PO Reference</b>	To be provided on acceptance of Contract

## 6. CONFIDENTIAL INFORMATION

**The following information shall be deemed Commercially Sensitive Information or Confidential Information:**

Confidential Information shall include any information which has been designated as confidential by the Contracting Authority and the MSP as defined in Clause 1 (Interpretation) of the YPO 000940 Call-Off Terms and Conditions and shall include all Commercially Sensitive Information as defined in Section 43 (Commercial Interest) of the Freedom of Information Act 2000.

## 7. SPECIAL TERMS AND CONDITIONS

In accordance with Clause 28.2(a) of the YPO 000940 Call Off Terms and Condition, each Party shall require the following data sets as defined under section 1 - Interpretation in YPO 000940 Call Off Terms and Conditions in order to process Personal Data as a part of performing its obligations under this Contract Services (Subject Matter):

**Annex 3 – GDPR Schedule**

### Appendix 2:

#### PRICES FOR SERVICES

Day rates:



FOIA Section 43 Commercial

[Redacted text block]

**The Total Charges under the Framework shall not exceed: £266,000 (excluding VAT).**

Consultants time (including all fees) will be booked up to a maximum total value of £266,000 as and when required over the course of the contract.

Please note the maximum total value is not a guarantee of spend.

**Appendix 3:**  
**Consultancy Areas**

<b>Professional Services/Consultancy Services</b>
<b>Category - New Models of Service Delivery</b>
Demand management and behaviour change (1)
Mutualisation, outsourcing and alternative delivery models
Payment by results / social impact bonds / routes to social investment
Positive deviance
Preventative services – how to commission and measure success
Public value analysis
Service design
Shared and merged services
Social marketing
Systems thinking
Trading services
<b>Housing</b>
Housing finance
Housing management
Housing needs, homelessness / finding a home
Housing repairs and maintenance
Prevention and private sector housing
Tenant participation and panels
Transfer and de-commissioning
<b>Welfare, tax, revenues and benefits</b>
Cashiers and cheque / cash handling
Council tax and business rates
Moving to universal credit / housing benefits
Welfare reform
<b>Libraries, Culture and Arts</b>
Community hubs, co-location and integration
Consulting interims in cultural services
Contracting authority insight and consultation on cultural services
Library back office service improvement
Library safaris
Managing transition between delivery models
Options analysis
Peer review
<b>Parking and Regulatory Services</b>
Environmental health, including catering
Licensing
Parking enforcement and penalty charge processing
Parking permits
Trading standards / consumer direct

<b>Planning and Public Realm</b>
Advice and validation
Building control
Community infrastructure levies
Planning application consultation and approval
Planning policy
Transport, policy, and information
Anti-social behaviour (abandoned vehicles, fly-tipping, graffiti, noise)
Highways (including street lighting)
Parks (including trees)
Street cleaning
Waste and recycling
Asset management
Construction and design
Sustainability
<b>Adult Care and Wellbeing</b>
Demand management
Fee setting and negotiations with providers
Integrated care
Public health integration and innovation
Quality assessment frameworks
Care management pathways
Commissioning, market management and market development
Pathways into services: advice, referral and assessments
Personalisation – systems, processes and outcomes
Service user, carer and stakeholder consultations
<b>Capacity Building</b>
Leadership development
Learning and development
Organisation development
Training, coaching, and mentoring
<b>Change and Transformation</b>
Business cases and benefits realisation
<b>Change management and stakeholder engagement</b>
Critical friend review of business plans
Efficiency and effectiveness programmes
Lean rapid improvement events
Mobile and flexible working (smart working)
Programme and project management
Rapid improvement events
<b>Resource optimisation</b>
Service reviews
Strategic partnerships
Learning and development

<b>Children's Services</b>
Children's centres, early years and childcare
Children's social care – transformation
Early intervention and prevention including youth services
Fostering and adoption
Children's social care – challenge
Services for disabled children
Safeguarding
<b>Civic and Organisational</b>
Electoral services
Facilities management
Legal services
Member and council enquiries
Property management
Recruitment
Registrars
<b>Criminal Justice</b>
Development of integrated offender management
Efficiencies and system redesign in probation
Preparation for 'transforming rehabilitation'
<b>Corporate , Policy and Finance</b>
Commercial, contract and performance review and in-sourcing
Commissioning and co-operative councils
Communication and reputation management
Community engagement
Complaints handling
Corporate services
Diversity and equality
Finance function effectiveness
Financial model analysis
Horizon scanning and innovation
Audit
Market research
Policy and strategy
Business strategy
Research and consultation
Social media strategy
Soft market testing
<b>Contracting authority focus</b>
Channel shift
Contracting authority contact health check
Contracting authority focused technology strategy
Contracting authority insight
Contracting authority safaris

Contracting authority-led transformation
Demand analysis and management
<b>Education</b>
Adult education
Free school meals
Higher education
Mutualisation/alternative forms of delivery
School admissions
School support services
School improvement and academy conversions
Special education needs and disabilities
<b>ICT Consultancy</b>
Cyber Security
Connectivity and infrastructure
Data centres and Cloud architecture
Artificial Intelligence and Chat Bots
Block Chain Analysis
Smart cities and surveillance
<b>Energy Consultancy</b>
Energy reviews
Energy related surveys
Renewable energy solutions
Optimising energy solutions
Energy performance consulting

**Appendix 4**

**CALL-OFF TERMS AND CONDITIONS VARIATION FORM**

**CALL-OFF TERMS AND CONDITIONS FOR SERVICES**

[Name of Lot] .....

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

Variation Form No:.....

**BETWEEN:**

[ ] ("the Contracting Authority")

and

[ ] ("the MSP")

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Authorised to sign for and on behalf of the Contracting Authority**

Signature .....

Date .....

Name in Capitals .....

Address .....

**Authorised to sign for and on behalf of the MSP**

Signature .....

Date .....

Name in Capitals .....

Address .....

## CALL-OFF SIGNATURE PAGE

### SIGNED BY OR ON BEHALF OF THE PARTIES

#### For and on behalf of Contracting Authority

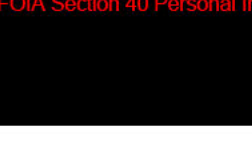
<b>Contracting Authority;</b>	United Kingdom Research and Innovation
<b>SIGNATURE:</b>	<small>FOIA Section 40 Personal Information</small> 
Name:	
Title:	Commercial Business Partner
Date:	26 September 2023

#### For and on behalf of the MSP.....

(Director/Company Secretary)

<b>SIGNATURE:</b>	<small>FOIA Section 40 Personal Information</small> 	
Name:		Managing Director RTS
Date:	26 September 2023	

(For Order Form)

<b>SIGNATURE:</b>	<small>FOIA Section 40 Personal Information</small> 	
Name:		Managing Consultant Ailsa Hegarty
Date:	27 September 2023	

**Annex 1 - UKRI-3364 Specification**



Ref No: UKRI-3364 Specification

**Specification  
For  
UKRI-3364  
UKRI Specialist Global Mobility -  
Consultancy Support**





**UK Research  
and Innovation**

Ref No: UKRI-3364 Specification

**Annex A: Specification Document – Services / Supplies & Services**

<b>Title of Request:</b>	<b>UKRI Global Mobility</b>
<b>Duration of Engagement:</b>	Approximately 2 years
<b>Required Commencement Date:</b>	ASAP

**1. Introduction**

UKRI urgently needs specialist external consultancy in the Global Mobility area to support and advise on a business critical project looking at the risk of employing groups of employees and bespoke individual cases outside of the UK.

The first phase of work will be to look at the key overseas science sites and offices – this spans approximately 60 employees across 10 overseas countries.

There may then be a second phase of work to cover the work completed at the British Antarctic which has a variable workforce of 30-450 per annum.

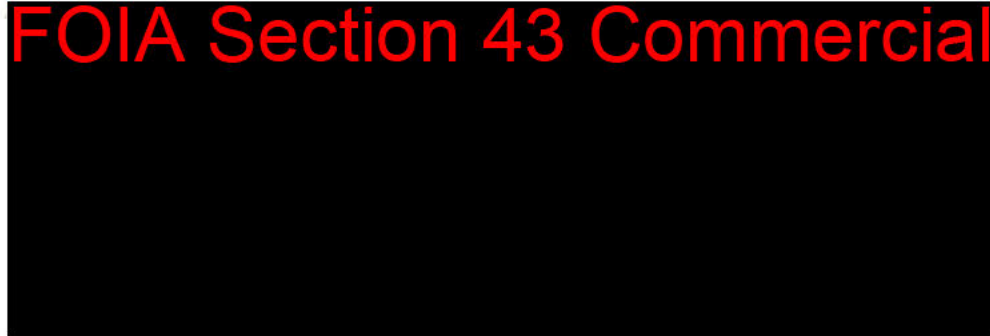
**FOIA Section 43 Commercial**

This consultancy arrangement is in addition to the specialist professional services that are also required to run the detailed review, reporting and corrections on legal matters (ie, tax advice and rectification work, country specific legal advice, country specific immigration advice and overseas remuneration packages).



**2. Aims & Objectives**

The aim of this project is to provide UKRI with specialist Global Mobility expertise to partner with us in understanding our risks within the global mobility and overseas working areas.



Reports from the Supplier should be proactive, clear and explicit in making recommendations along with forward thinking approaches, to future proof UKRI's needs in ensuring that UKRI remains compliant going forward in our overseas contracts and local country tax and society security obligations.

It is critical that the Supplier works effectively alongside the appointed external tax and legal consultants, to establish the full picture of scenarios which need to be considered across all workstreams of the project.



### **3. Background to the Requirement**

We are operating a wide and complex project looking at all our current overseas employees. These are across a variety of arrangements:

- Secondment type situations where we have sent employees overseas for a defined period in our designated UKRI sites
- Long term / permanent arrangements where we have local contracts in place in our designated UKRI sites
- Bespoke/personal situations at the employee's request, not linked to a UKRI site

We are working with several other specialist suppliers in this project to obtain:

- Tax and social security advice
- Immigration advice

The Global Mobility element is one strand of this work.

It is likely that we will require joint input from all our suppliers at meetings to ensure we are taking a holistic look and have a joined-up approach going across all areas.

Due to the complexity of the project, it has been agreed that we are working on a country-by-country basis.



**4. Scope**

The scope of this project applies to UK and overseas employment law, which applies to 10 overseas countries.

**FOIA Section 40 Personal Information**

We are looking at all aspects of overseas working arrangements including the employment contract, tax/socsec details, remunerations packages and policy & governance arrangements. The supplier should proactively identify any additional areas of importance for consideration.



**5. Requirement**

The Supplier must have extensive sector breadth and expertise in providing advise within the Global Mobility area.

The Supplier must provide a dedicated consultant/s to work on this project throughout the lifespan on this project to maintain relationship consistency.

UKRI requires the Supplier to securitise our third party legal and tax advice to understand our current liabilities and propose solutions to overcome these.

The Supplier is required to support with contract management and interface with third-party suppliers as defined by UKRI.

**FOIA Section 43 Commercial**

We require the Supplier to help us pull together policies and governance around future overseas working to ensure we remain compliant in a strategic and harmonised approach.

The Supplier must provide an implementation and change roadmap development for remaining activities.

The Supplier is required to provide UKRI with ongoing coaching, knowledge transfer and upskilling support to HR and wider colleagues.

The Supplier is required to support with weekly project manager calls in addition to regular face to face meetings and ad-hoc calls as necessary to progress the workstreams of the project.



UK Research  
and Innovation

Ref No: UKRI-3364 Specification

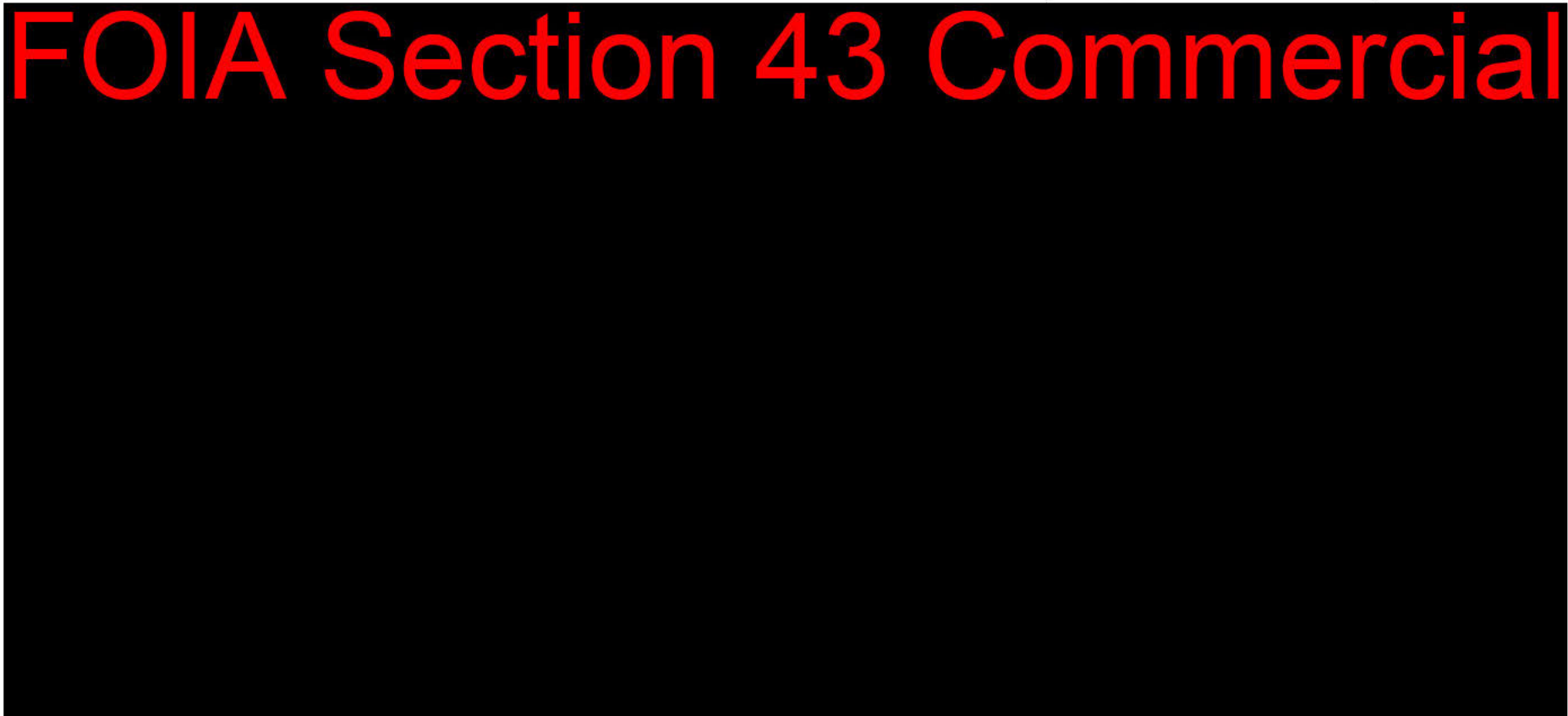
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# FOIA Section 43 Commercial



# FOIA Section 43 Commercial



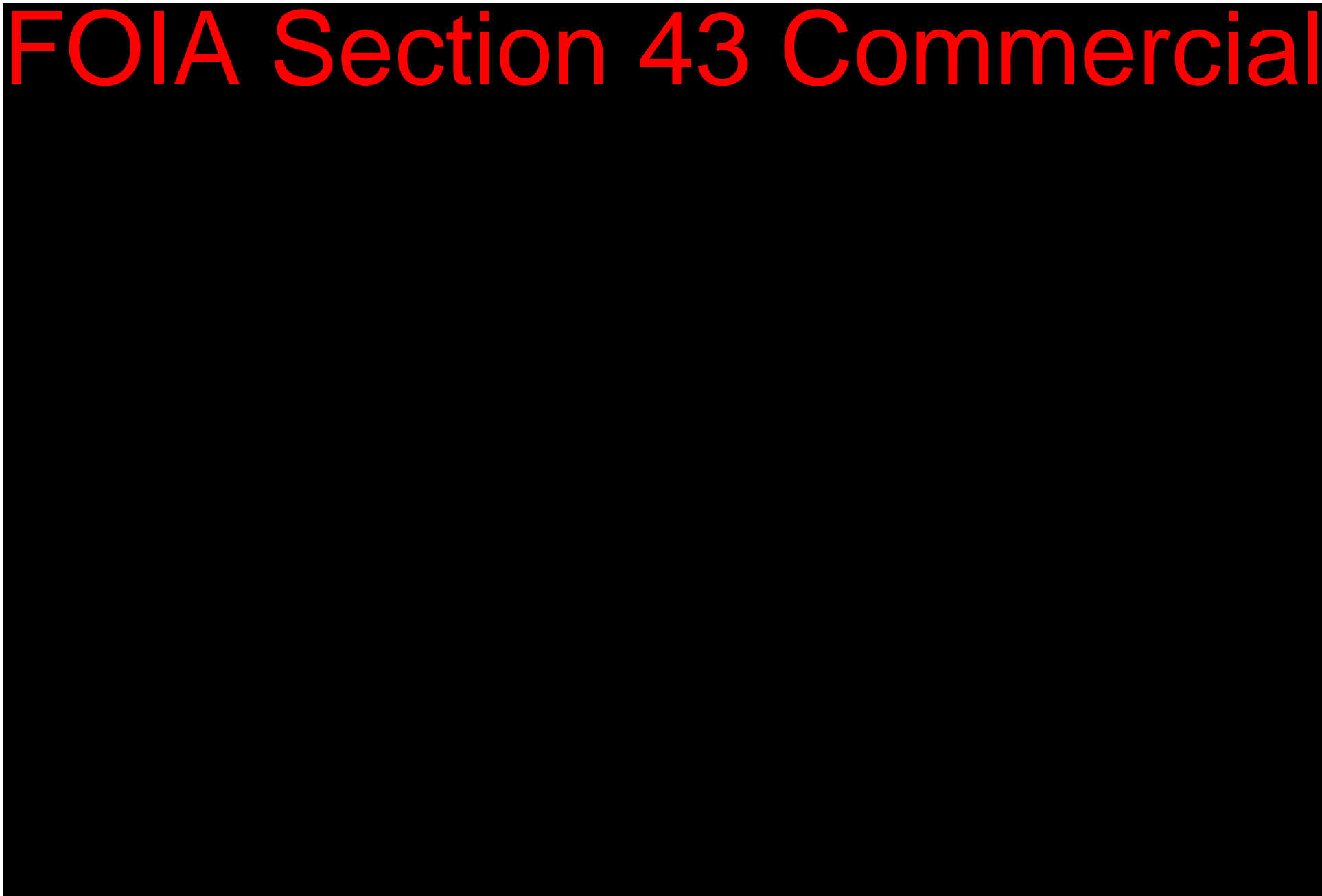
13/09/2023

Proprietary and Confidential

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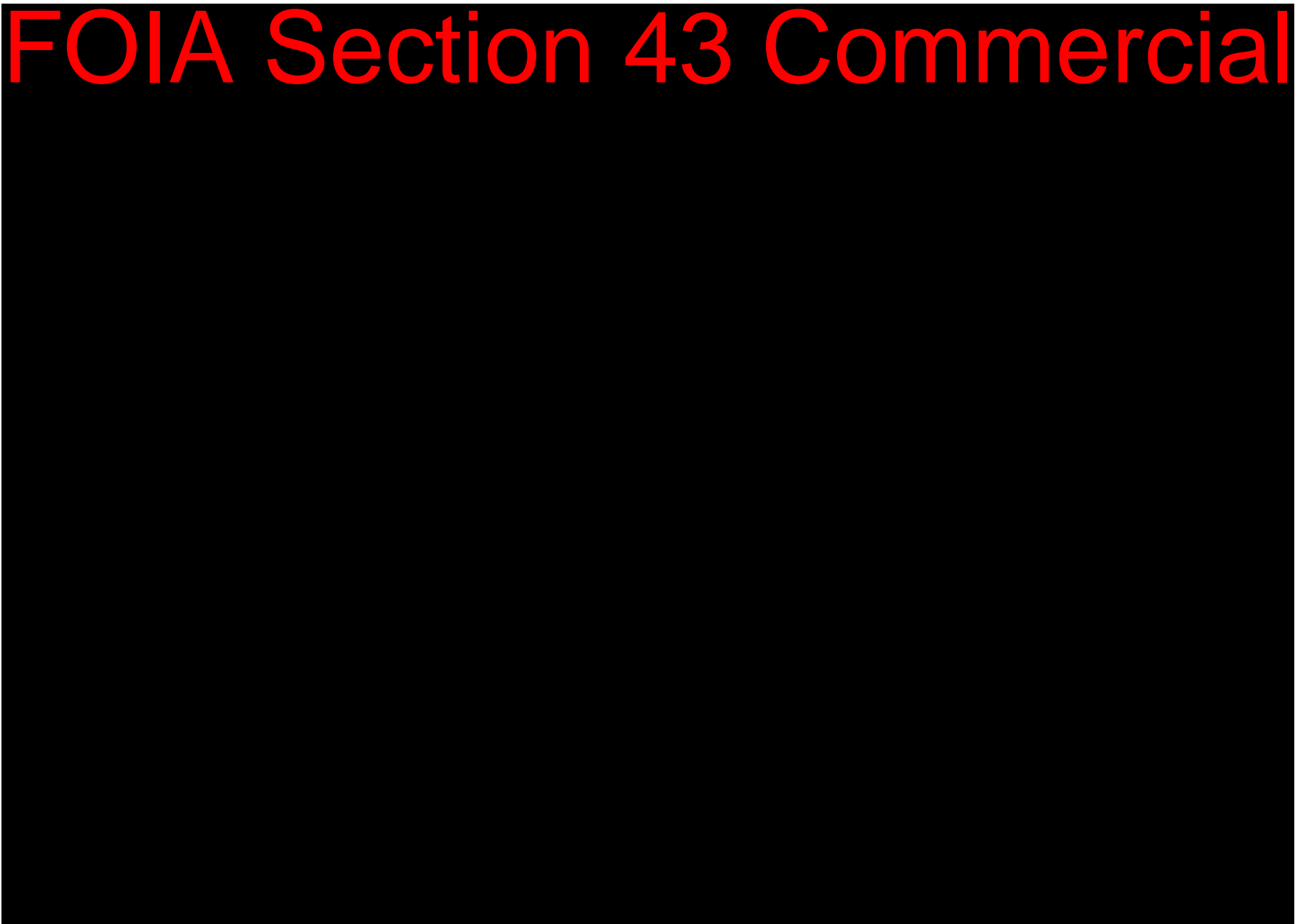
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**Annex 3 - UKRI-3364 GDPR Annex****Data Subjects Schedule [X]**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [dataprotection@ukri.org](mailto:dataprotection@ukri.org)
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the <i>Client</i> is the Controller and the <i>Contractor</i> is the Processor in accordance with <b>[Clause 1.1 – insert definitions clause]</b> .
Subject matter of the processing	The processing is required in order to review the individual rectifications needed to make overseas employees compliant in a range of situations including: <ul style="list-style-type: none"> <li>- Tax</li> <li>- Social security</li> <li>- Employment law</li> </ul> <p>The exercise cannot be completed without the exchange of data.</p>
Duration of the processing	Across the duration of the overseas working project – unable to give specific dates as the project is evolving but this is currently estimated at 2 years.
Nature and purposes of the processing	We are processing the data for employment processing and statutory obligations: <ol style="list-style-type: none"> <li>1. to review the existing legal/tax/social security etc arrangements for each employee and understand whether or not they have been in a compliant manner.</li> <li>2. To rectify any identified variances</li> <li>3. Understand the risks and employee portfolio to inform on future strategy and governance</li> </ol>