

[REDACTED]

From: FOI
Sent: 22 March 2022 15:31
To: [REDACTED]
Subject: FOI 020-22 - Response

Dear [REDACTED],

Our Ref: FOI-020-22

Thank you for your email to the Electoral Commission dated 2 March 2022.

The Commission aims to respond to requests for information promptly and has done so within the statutory timeframe of twenty working days.

Your request is shown below followed by our response.

Please provide a copy of the full ITT documentation issued in relation to your 2016 tender exercise for an outsourced switchboard service, as awarded to Your Business Voice Ltd.

Please note that I am not interested in receiving any commercial confidential or sensitive information. Simply copies of the procurement documents as published by you to interested parties.

Procurement reference: C0082-PT-FCS

Our response is as follows:

We hold the information you have requested.

We are releasing the following documents:

1. C0082-PT-FCS-ITT accompanying letter – Read me first
2. C0082-PT-FCS-Guidance notes Suitability Assessment Questionnaire
3. C0082-PT-FCS-Evaluation Criteria for Suitability Questionnaire
4. C0082-PT-FCS-Section 1 – Conditions of contract for services
5. C0082-PT-FCS-Outsourced switchboard service – Scope of work
6. C0082-PT-FCS-Section 3 – Tenderer’s response
7. C0082-PT-FCS-Suitability-Assessment-Questionnaire-
8. C0082-PT-FCS-Advert-Outsourced switchboard tender

To access the documents you will need to use our document-sharing system Objective Connect:

You will receive an ‘Invitation to Objective Connect Email Notification’ (sent to the inbox of [REDACTED]). This notification will contain a link to enable you to start accessing your information. Please find below details on how to access the specific area we have set up for your documents.

- a) Click on the link in the email.
- b) You will be prompted to set up your username and password. Your username will be your email address, and your password can be whatever you like.

- c) With your username and password, enter both details at the login screen and click 'login'.
- d) You will now see your personal page, which will show the Share 'FOI 020-22'
- e) By clicking on the name of the share, you will find your documents.
- f) You may view any of these documents
- g) In addition you may download a copy to your personal computer by selecting the 'download' option and then 'save'.

This service will be closed one month from our response date, this is the 22 April 2022.

The Commission strives to be an open, transparent authority and I trust that this information satisfies your request.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at:

<https://www.electoralcommission.org.uk/freedom-information/make-a-freedom-information-request>.

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website: <https://ico.org.uk/>.

Yours sincerely

Information Officer

FOI@electoralcommission.org.uk

The Electoral Commission

[electoralcommission.org.uk](https://www.electoralcommission.org.uk)

11 January 2016

Dear Supplier,

Invitation to Tender for Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

1. You are hereby invited by the Electoral Commission to Tender as described in the accompanying documentation. For this purpose we enclose the following documents, which will form the basis of any Contract that the Commission may award.

2. This Invitation to Tender consists of:

Annex A	Instructions to Tenderers
Annex B	Template of the Return Address Label
Annex C	Tender Evaluation Matrix
Section 1	Conditions of Contract
Section 2	Scope of Work
Section 3 (information for you to complete and return)	Tenderer's Response (a) Form of Tender (b) Administrative Instructions (c) Method Statement Layout (d) Pricing and Staffing Schedules
Section 4	Suitability Assessment Questionnaire Form, Evaluation Matrix and Guidance

Documents to be returned with Invitation to Tender

3. The Commission is to be notified of any errors, omissions or details contained in this Invitation to Tender documents that precludes you from tendering for this Contract.

Return Date and Time

4. Your Tender, which must be submitted strictly in accordance with the instructions in this invitation, Annex A to this letter refers, is required to be in our office at the address below by **Wednesday 27th January 2016 at 17:00 hours.**

Phil Tucker
Head of ICT & Facilities
The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ

5. This is an enquiry only. The Commission reserves the right to negotiate any or all parts of your proposal. The Commission, at its sole discretion, reserves the right to accept or reject any or all or any part of the bids received, including the right not to accept the lowest quotation, and shall not be liable to accept any costs incurred in the production of your submission.
6. You are instructed to provide, by post, hand delivery or delivery by courier, **three paper copies plus one electronic (CD or memory stick) copy** of the Tender and all documents that are returned with your submission.

Timetable

7. Please find below a programme of the Tender award process that the Commission will be following. The intention is to have a Contract start date of **2 February 2016**.

Item	Description	Date
1	Issue Invitation to Tender	11 January 2016
2	Submission return deadline	27 January 2016, 17:00 hours
3	Tender Evaluation	28 – 29 January 2016
4	Notification to tenderers and award of contract (provisional)	02 February 2016
6	Contract starts	02 February 2016

Table One : Timetable of Tender Award Process

Please kindly note this programme is only a guide and may be subject to amendment at any stage. No claim will be accepted for any bidding costs whatsoever or any claim for costs resulting from a decision not to proceed or withdrawal from all or any of the elements within the programme, deletion or addition to the programme or general protraction of the overall time frame.

Electronic copies of Tender documentation

8. The Commission does not accept any responsibility for compatibility with operating systems. Furthermore, the Commission does not accept responsibility for erroneous formulae etc that may be contained within the Pricing and Staffing Schedules. It is the responsibility of Tenderers to ensure all documents submitted to the Commission are accurate.

Enquiries

9. Any enquiries concerning this Invitation to Tender should be directed in writing, via email to:

Phil Tucker
Head of ICT & Facilities
PTucker@electoralcommission.org.uk

Tenderers who would like to receive details of enquiries and respective responses should email as indicated above, providing an email address for response and confirming 'We will be submitting a proposal for the tender C0082-PT-FCS by the due date'. Tenderers should note that all enquiries will be answered promptly up to two days before the closing date for return of submissions.

Formal Briefing

10. The Commission **does not** intend on holding a formal briefing to discuss the contract requirement. However, if you have specific questions/queries relating to the requirement, please forward these to the nominated Commission representative identified in paragraph nine (9) above.

Yours sincerely,

Phil Tucker
Head of ICT & Facilities

Encl. Annex A – Instructions to Tenderers
Annex B – Return Address Label Template
Annex C – Tender Evaluation Matrix

ANNEX A

Instructions to Tenderers

1. Invitation to Tender documents

- 1.1 The Tenderer is expected to examine all of the instructions, forms, Terms and Conditions and specifications that comprise the Invitation to Tender documents. Unless the Tenderer provides all of the information required, the submission may not be deemed compliant and may be rejected.
- 1.2 The Tenderer shall provide **three paper copies plus one electronic (CD or memory stick) copy** of their proposals in the following format.
 - a. Completed Forms of Tender Parts I, II and III (Section 3(a))
 - b. Completed Administrative Instructions (Section 3(b))
 - c. Completed Method Statement (Section 3(c))
 - d. Completed Pricing and Staffing Schedules (Section 3(d))
 - e. Additional supporting information
- 1.3 The returned submission should be restricted to information that is specific to this Contract. General company information should not be included.
- 1.4 All specifications, plans, drawings, samples and patterns issued in connection with the Invitation to Tender remain the property of the Commission and are to be used solely for the purpose of this Tender.

2. Amendments to Invitation to Tender documents

- 2.1 At any time prior to the deadline for receipt of submissions, the Commission may modify the Invitation to Tender documents by amendments.
- 2.2 Any such amendments will be ratified in writing to all prospective Tenderers, in sequentially numbered communications, and will be binding on them.
- 2.3 The Tenderer is required to record all such amendments on the form provided, which must be returned with the submission.
- 2.4 The Commission may extend the deadline for Tenderers to allow for significant amendments to be fully assessed and taken into account.

3. Tender prices

- 3.1 Tenderers should use the Pricing and Staffing Schedules at Section 3(d) to detail their prices for the cost of the requirements.
- 3.2 The basis of the prices shall be inclusive of all costs.

- 3.3 Other information requested should be submitted with the Form of Tender.
- 3.4 The Commission reserves the right to reject any Tender if the Tenderer has failed to complete and return all parts of the Form of Tender and requested information.
- 3.5 The Commission acknowledges that Variations to Contract may be required. The details of this process are clearly outlined within Section One (Conditions of Contract).

4. Contractor selection

- 4.1 The successful Tenderer will offer the best overall balance between service quality and cost with regard to (in no particular order of importance) ability of the Tenderer to meet the terms of the specification, price, capacity and technical capability, track record, resources provided, the systems and measures proposed for managing and monitoring and reporting on the provision of the requested requirements.
- 4.2 A comparison of costs will be based on the Tenderer's prices submitted using the Pricing and Staffing Schedules found in Section 3(d) of this Invitation to Tender.
- 4.3 The assessment of potential service quality will initially be based on the completed Method Statement found at Section 3(c) of this Invitation to Tender. From this initial evaluation, a short list of Tenderers may be selected for more detailed evaluation.

5. Documents establishing the Tenderer's eligibility and qualifications

- 5.1 If requested, the Tenderer shall provide documents with the submission establishing his eligibility to tender and qualifications to fulfil the Contract.

6. Submission of Tenders

- 6.1 The Tenderer shall seal the Tender securely in an **unmarked** envelope and send **three paper copies plus one electronic (CD or memory stick) copy** of it to the address shown on page one (1), paragraph four (4) of this Invitation to Tender. A template of the return address label is included at ANNEX B for your use.
- 6.2 The submission must be received by post, hand delivery or delivery by courier, at that address no later than the date and time specified in the Invitation to Tender.
- 6.3 Any submission received after the deadline may be rejected and returned to the Tenderer.
- 6.4 Telephone, fax, email or telex submissions will not be accepted.
- 6.5 Submissions and all supporting information must be priced in sterling and all payments will be made in sterling.

6.6 The Tenderer should not amend the Form of Tender and Pricing and Staffing Schedules in any way - any modification considered necessary should form the subject of a separate letter to accompany the submission. Figures should not be over-written or erased once they have been entered in the Pricing and Staffing Schedules. Any alteration necessary should be made by striking through the incorrect entry and inserting the correct figures above the originals. Such alterations must be made in ink and signed by the Tenderer.

7. Compliance

- 7.1 Tenderers must submit a compliant submission in accordance with the above instructions and the Scope of Work, which represent the minimum requirements. However, Tenderers are encouraged to submit additional or alternative proposals and plans, which will result in commercial benefits and/or improved levels of service, which should be clearly itemised in a separate schedule.
- 7.2 Submissions must be based on the conditions set out in the Invitation to Tender; otherwise they may be rejected on the grounds of non-compliance with the technical or commercial requirements.
- 7.3 Any areas of non-compliance with this Invitation to Tender must be detailed by the Tenderer in a separate covering letter to be attached to the submission return.

8. Tender costs

- 8.1 The Commission will not be liable for any cost incurred in submitting a proposal. While the information supplied by the Commission in these documents is given in good faith, it is the responsibility of Tenderers to obtain at their own expense all information necessary for the preparation of their submission.

9. Modification and withdrawal of submissions

- 9.1 If a submission is submitted prior to the deadline, the Tenderer may modify the submission prior to the deadline for receipt giving notice in writing. The modification must be sent sealed, in the same manner as the original. The envelope must be identified externally with the Invitation to Tender reference and marked 'Commercial in Confidence'.
- 9.2 No submission may be modified after the deadline for receipt.
- 9.3 Submissions may be withdrawn at any time before notice of the Award of Contract, providing such intention is expressed in writing (including email or fax) to the Commission.

10. Evaluation of submissions

- 10.1 The Commission will evaluate all submissions, without prejudice or bias towards any

one Tenderer that fulfils the conditions and requirements of the Invitation to Tender.

11. Notification of Award of Contract

- 11.1 The Commission will notify acceptance of the submission to the successful Tenderer as soon as is reasonably practicable.
- 11.2 Unless a separate Contract document is used, that acceptance shall constitute the formation of a Contract.

12. Confidentiality

- 12.1 The information provided in the tender submission will be treated in the strictest confidence. The Tenderer's attention is, however, drawn to the Freedom of Information Act 2000 and the fact that the Commission may receive requests for information from third parties about a proposed contract intended to be let by the Commission. Should a request be received for information in respect of a tender submission and supporting documents submitted by a Tenderer, the Commission will, in accordance with the provisions of the Act, determine whether information should be disclosed.
- 12.2 As part of its deliberations the Commission will consult with a Tenderer before determining whether to release information or data. The Tenderer should satisfy themselves in respect of the Act and take their own legal advice on the aforementioned legislation if any of the documents and/or data it intends to submit is commercially sensitive. Where this is the case, Tenderers should mark them appropriately to signify their status but even if so marked they will still have to be assessed by the Commission under the said Act.

ANNEX B

Template of the return address label:

Commercial in Confidence

NOT TO BE OPENED UNTIL 27 January 2016, 17:00 hours

TENDER DOCUMENTS ENCLOSED

Contract Reference No. C0082-PT-FCS

**Phil Tucker
Head of ICT & Facilities
The Electoral Commission
3 Bunhill Row
London
EC1Y 8YZ**

ANNEX C

Tender Evaluation Matrix

Tender for Outsourced Switchboard Service for the Electoral Commission Contract reference: C0082-PT-FCS

Evaluation of Tender submissions

Tenders will be evaluated using a scoring system from 0 to 4 as described below.

Score	Description
0	Unacceptable – There is insufficient detail in the response to enable a satisfactory degree of consideration. The response presents significant risks to the overall service delivery.
1	Unsatisfactory – There is a lack of detail in the response and it provides for only some aspect of the scope of service delivery. The response presents some risks to the overall service delivery.
2	Satisfactory – The response provides sufficient detail to enable an adequate degree of consideration and provides for most aspects of the scope of service delivery. The response presents minor risks to the overall service delivery.
3	Good – The response provides sufficient detail to enable a good degree of consideration and provides for the full scope of service delivery. The response presents no risks or concerns to the overall service delivery.
4	Excellent – The response provides sufficient detail to enable an excellent degree of consideration and provides for the full scope of service delivery. The response presents no risks or concerns to the overall service delivery.

Table one – scoring grid

Responses will be individually assessed according to the scoring system above. They will then be applied as shown in the table below to provide the weighted score, which once added up will provide the final score.

Criteria	Weighting	Maximum Score = (weighting x rate from scoring grid)	Tenders scores and comments
Service delivery			
This criterion will be looking at tenderer's understanding of what is required from the scope of work and their ability to demonstrate how the service will be provided.			
Understanding of the specific requirements of the project being tendered for;	10	Table one applies	
Outline of how the service will be delivered and how the Commission's requirements will be met;	10		
Ability to propose efficient and effective ways in delivering the contract which can be translated into value for money.	10		
Understanding of key risks for the project and quality of recommendations to mitigate those risks.	5		
Maximum weighting	35		
Implementation plan and timescales			
Outline of project implementation timings and ability to meet the Commission's deadlines.	5	Table one applies	
Maximum weighting	5		

Management, supervision and resources			
Availability and quality of personnel including project managers, designers and developers	5	Table one applies	
Qualifications and experience, availability of support staff, (Assessment of qualifications, suitability and numbers of support staff detailed in tender response)..	5	Table one applies	
Business continuity procedures and disaster recovery plan which will ensure continuous service delivery, including data access and data protection.	3	Table one applies	
Environmental, equality and diversity approach taken in relation to the delivery of this service to the Commission.	2	Table one applies	
Maximum weighting	15		

Suitability Questionnaire			Scores and comments
Capacity, capability and financial standing	5	The result from the BQ Score will be weighted by 5% (e.g. BQ maximum possible score 80 x 0.05 = 4 (adjusted score)	
Maximum weighting	5		

Cost		Scores and comments
Weighting 40	Cost will be evaluated taking into account individual costs provided. We will calculate the average cost of all tenders and award it a score of 50 (which is half of the maximum possible score of 100). Tenders' scores will	

	<p>then be calculated by either deducting half a point from a total score of 50 for each percentage point above the average priced tender; or by adding half a point for each percentage point below the average price, up to a maximum of 100. The result will be weighted by 40% to give the final cost score. For a worked costs example see Appendix 1 to the Instructions to Tenderers document.</p> <p>The Commission reserves the right to query and reject any proposal which costs are unusually high or low in relation to the average cost.</p>	
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Total weighting for qualitative factors	55	Maximum score 220	
Total weighting for BQ	5	Maximum score 4	
Total weighting for costs	40	Maximum score 40	
Total weighting	100	Max possible score 264	

Appendix 1 – Worked costs example

(1)	Supplier A	Supplier B	Supplier C	Average Cost
Tenderers' submitted costs	£200	£289	£420	£303

(2)	Supplier A	Supplier B	Supplier C
Difference between submitted and average cost	-34	-5	39

(3)	Supplier A	Supplier B	Supplier C
Maximum score out of 100	57	42	21
Weighted Final Cost Score (40%)	23	17	8

Suitability Assessment Questionnaire

Invitation to Tender for Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

Section Four

Guidance Notes

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- 1. Introduction and Purpose**
- 2 Confidentiality**
- 3 Consortia and Sub-contracting**
- 4 Evaluation of the Suitability Questionnaire**
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 - Section 2 – Compliance with EC Legislation / UK Procurement Legislation**
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 - Section 9 – Business Capabilities:**
 - Question 9.1 - Trade Affiliations**
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 - Section 10 – Declaration of staff screening**
 - Section 11 – Comments**
 - Section 12 – Declaration**
- 6. Summary of ineligibility conditions provided by Regulation 57 of the Public Contracts Regulations 2015**

1. Introduction and Purpose

The purpose of this Suitability Assessment Questionnaire is to contribute towards the Electoral Commission's assessment of which tendering organisations are suitable to become the Commission's contractor. The Suitability Assessment Questionnaire should be read in conjunction with this information as well as details of the Contract requirements, published elsewhere within the tender documentation.

Where a tender(s) is successful and results in an award of contract, the information contained within the Suitability Assessment Questionnaire (as completed by the tenderer) will be contractual information and will form part of the contract documents for the Organisation awarded the contract. Organisations should take the utmost care to ensure the accuracy of the information provided in support of their tender.

The tenderer should complete all the questions, regardless of their commercial status (being a Sole Trader, Private Limited Company, Public Limited Company, Limited Liability Partnership or other Partnership, Industrial and Provident Society, Community Interest Company, Charitable Trust or other commercially recognised organisation) and where there is a reference to a commercially known office or position or Company environment, a tenderer should assume the equal and equivalent in their own Organisation.

Acceptance of the information supplied in a Suitability Assessment Questionnaire does not imply any guarantee by the Commission as to a firm's financial standing or technical competence.

In the course of evaluating a tenderer's submission the Commission may seek further information about their organisation held by third parties such as Credit Reference Agencies and Statutory Bodies. In completing and submitting the Business Questionnaire form you agree to the Commission obtaining such information for the purposes specified.

1.1 The following important points should also be noted:

The Suitability Assessment Questionnaire forms part of the tender documentation and should be returned as such in accordance with the 'Instructions to Tenderer'.

All attached information must be clearly identified with the Applicant's name and the Questionnaire Part and number to which it relates.

The Commission reserves the right to seek clarification of your answers and to ask you to provide more details.

Do not include any publicity or marketing material with your submission unless it has been specifically requested, although the inclusion of a Web Site address is permitted.

Please answer the questions specifically for your Organisation and not for the group if you are part of a group of companies. Where, however, group policies, statements, etc are normally used please answer accordingly.

Please note that any organisation as part of a group of companies that completes the Suitability Assessment Questionnaire is the organisation that, if successful at tender, will enter into any subsequent contract. The Tenderer should take care to ensure that the identity of the Organisation that is completing the Suitability Assessment Questionnaire as part of the tender submission is correct.

Before returning your tender, please ensure *all* questions in the Suitability Assessment Questionnaire have been answered and all relevant documents are attached. Failure to do so could render your submission non-compliant.

The Commission will not be liable for any costs incurred by any organisation tendering for any contract opportunity.

It is the Tenderer's responsibility to obtain for themselves, at their own expense, all information necessary for the preparation of their tender and Suitability Assessment Questionnaire.

It is important that you fully answer all the questions. Your tender may be rejected if you do not answer a question. If a question does not apply, please write "N/A".

All information provided by the Commission is not warranted and shall be treated as private and confidential. The Commission will use reasonable endeavours to ensure all information supplied is accurate and complete but will not be liable for any misstatement or misrepresentation made by the Commission except where such misrepresentation is made otherwise than in good faith.

The tenderer should not alter the contents of any part of a questionnaire: where this occurs the submission will be deemed non-compliant.

If a tenderer decides not to proceed they should notify the named officer as soon as possible.

The Commission reserves the right to change the procedure for awarding a contract at any time without liability.

The Commission is not bound to award any contract and reserves the right to abandon any procurement process at any time at no cost to the Commission. Further, any action on the part of the Commission or the tenderer which might

be construed as creating a legal relationship will not be construed as such, save as may be inferred at law, or there is specific correspondence or agreement creating a contractual relationship.

Non-UK Organisations should attempt to answer all the questions, substituting where relevant the appropriate legislation or codes of practice applicable within their domestic jurisdiction. Organisations with UK-based registered operations will be expected to reply under English law.

Specific areas in which the Suitability Assessment Questionnaire seeks information are described in the rest of this document.

2. Confidentiality

The information provided in an organisation's submitted questionnaire will be treated in the strictest confidence. The tenderer's attention is, however, drawn to the Freedom of Information Act 2000 and the fact that the Commission may receive requests for information from third parties about a proposed contract intended to be let by the Commission. Should a request be received for information in respect of a Suitability Assessment Questionnaire and supporting documents submitted by a Tenderer, the Commission will, in accordance with the provisions of the Act, determine whether information should be disclosed.

As part of its deliberations the Commission will consult with a tenderer on their Suitability Assessment Questionnaire before determining whether to release information or data. The tenderers should satisfy themselves in respect of the Act and take their own legal advice on the aforementioned legislation if any of the documents and/or data it intends to submit is commercially sensitive. Where this is the case, tenderers should mark them appropriately to signify their status but even if so marked they will still have to be assessed by the Commission under the said Act.

3. Consortia and sub-contracting

Where a consortium or sub-contracting approach is proposed, all information requested should be given in respect of the proposed prime contractor or consortium leader. Relevant information should also be provided in respect of consortium members or sub-contractors who will play a significant role in the delivery of services or products under any ensuing contract. Responses must enable the Commission to assess the overall service proposed.

Where the proposed prime contractor is a special purpose vehicle or holding company, information should be provided of the extent to which it will call upon the resources and expertise of its members.

The Commission recognises that arrangements in relation to consortia and sub-contracting may be subject to future change. Service providers/suppliers should therefore respond in the light of such arrangements as are currently envisaged.

The Commission intends seeking independent financial and market advice to validate information declared or to assist in the evaluation. Reference site visits or demonstrations and/or presentations may be required.

4. Evaluation of the Suitability Assessment Questionnaire

Evaluation criteria for the Suitability Assessment Questionnaire will be a combination of both financial and non-financial factors and will consider:

- a) Supplier Acceptability – status of supplier in relation to Regulation 57 of the Public Contracts Regulations 2015. A summary of Regulation 57 is appended to this document.
- b) Economic and Financial Standing – the supplier must be in a sound financial position to participate in a procurement of this size as set out in Regulation 58, 1b of the Public Contracts Regulations 2015. This may entail independent financial checks.
- c) Supplier Track Record - The Service Provider must be able to demonstrate a successful track record of providing similar services
- d) Supplier capacity and capability – Assessment of the totality of resources and core competences available to the supplier(s).

The information supplied will be checked for completeness and compliance before responses are evaluated.

Some questions are for information purposes only.

The Evaluation Criteria for the Suitability Assessment Questionnaire is available as part of the tender documentation.

Evaluation of subsequent stages will be undertaken in accordance with the tender evaluation criteria.

The Commission intends to award a contract based on the most economically advantageous tender and provision of best overall value for money.

5. The Questionnaire

Section 1 – Organisation identity and basic details

The Commission will need some basic contact details for each supplier and some background information about who they are.

Section 2 – Compliance with EU Legislation / UK Procurement Legislation

The Commission needs to know whether a supplier is ineligible to be considered for selection due to insolvency, gross misconduct, etc. See item 6.

Section 3 - Financial information

The Commission needs to know about a potential supplier's financial situation. It will want to be sure that the firm has the financial resources and stability to carry out the required work, and that they are likely to be around for the duration of the contract. The Suitability Assessment Questionnaire asks each supplier to provide copies of the last two annual reports and audited accounts, where available (including those of the ultimate parent company if applicable), and a statement of turnover in respect of the requirement, to allow the Commission to assess the supplier in this area.

Section 4 – Prime Contractor

The Commission will want to know whether the supplier intends to bid as a single contractor that may act alone, or as a Prime Contractor to sub-contractors providing services on its behalf.

Some suppliers may want to sub-contract out some elements of the work in order to fulfil the Commission's requirement, and if this is the case, then it is important to understand the type and proportion of any parts of the requirement that the supplier intends to sub-contract and how the supplier will ensure the quality and timeliness of such sub-contracted work.

Section 5 – Insurance

There are sometimes problems with contracts for one reason or another. The Commission needs to know that potential suppliers have the necessary insurance policies to adequately cover any such problems. The minimum expected insurance cover for Professional indemnity is £250,000.

Section 6 – References

When a supplier wants to be invited to tender for appointment as a preferred contractor for a Framework Agreement, the Commission will want to know if it has done similar jobs of a similar size to a good standard in the past. The Questionnaire therefore asks for details of up to three previous public or private sector jobs carried out by the supplier. The more similar these are to the Commission's current requirements the better.

Section 7 – Disputes

The Commission would like to know if your Organisation has been involved or have any outstanding court action and/or significant employment tribunal action over the last 3 years.

Section 8 – Political affiliations

The Commission needs to establish whether a potential supplier has any political affiliations which may call into question the firm's "independence" and integrity.

The work carried out by the Commission must be strictly politically impartial, therefore any affiliations with any registered political party or any third party recognised under the Political Parties, Elections and Referendums Act 2000 of the tendering organisation, or that of their staff assigned to do work for the Commission, will need to be disclosed by the tenderer. These affiliations will

be considered by the Commission, and may deem the organisation ineligible for this contract.

Section 9 – Business Capability

The Commission will want to assess that a supplier has experience and expertise in the field that is the subject of the proposed contract and that the work required would not be a new departure for them. The following areas are designed to help with this assessment:

Question 9.1 – Trade affiliations

The Commission will want to know whether a supplier maintains recognised standards within its industry. One of the criteria that can be assessed is trade affiliation. Trade affiliations generally indicate that certain industry-recognised standards have been met.

Question 9.2 – Data Protection

The Commission needs to be satisfied that you comply with the Data Protection Act 1998.

Question 9.3 – Locations

The Commission needs to know from where the supplier intends to service the Framework Agreement.

Question 9.4 – Health and Safety

The Commission will want to be sure a supplier takes care to ensure the health and safety of its workers and others when carrying out its work. This will be especially important for construction work, for example. There are also legal requirements in this area, and the Commission will need to know that the supplier meets these.

Question 9.5 – Environmental management

Some business operations can have a large impact upon the environment, but all firms can help to ensure that they minimise any harmful effects of their work on the environment, for example by recycling where appropriate and properly disposing of hazardous materials. A firm's policies in this area will be more important for some types of Framework Agreement than others.

Question 9.6 – Equality and Diversity

The Commission has the responsibility to eliminate unlawful discrimination and promote equality of opportunity in its procurement processes and contract management dealings. Suppliers should provide information which demonstrates that they are working towards:

- eliminating discrimination
- tackling inequality
- developing a better understanding of our community
- targeting resources efficiently

Question 10 – Declaration of Staff Screening

The tenderer needs to provide assurance and indemnify the Commission, in a form of declaration, that appropriate checks have been made to ensure that the employees involved in the Contract with the Commission have been screened, legally employed and have permission to work in the UK.

Section 11 – Comments

This section allows the supplier to provide any other relevant information for consideration by the Commission.

Section 12 – Declaration

This is simply the confirmation to the Commission by the supplier that the information provided is valid and correct.

6. Summary of ineligibility conditions provided by Regulation 57 of the Public Contracts Regulations 2015 (No.102, chapter 2, Section 5, sub section 7)

This is only a summary of the legislation; bidders should refer to the Regulations and satisfy themselves that they are not ineligible.

Regulation 57 sets out the grounds on which service providers may be deemed ineligible to tender for or be awarded a public contract. Rejection is permissible when a Service Provider:

- is in a state of bankruptcy insolvency compulsory winding up, administration, receivership, composition with creditors or any analogous state, or subject to relevant proceedings;
- has been convicted of a criminal offence related to business or professional conduct;
- has committed an act of grave misconduct in the course of business;
- has not fulfilled obligations relating to payment of social security contributions;
- has not fulfilled obligations relating to payment of taxes;
- is guilty of serious misrepresentations in supplying information required by the Authority under the Regulations
- is not in possession of a licence or not a member of the appropriate organisation where the law of that State requires it;

Invitation to Tender for Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

EVALUATION CRITERIA FOR SUITABILITY QUESTIONNAIRE – SECTION 4

NON-SCORING CRITERIA SECTIONS 1, 2, 3, 5, 8, and 10

FAILURE TO PROVIDE A SATISFACTORY ANSWER TO THESE SESSIONS MAY DISQUALIFY THE APPLICANT

Section 1 - Organisation Details	
Are the supplier's responses satisfactory?	Comments
YES/NO	
Section 2 – Compliance with EC Legislation / UK Procurement Legislation	
Are the supplier's responses satisfactory?	Comments
YES/NO	

Section 3 - Financial Details	
Has the following financial information been provided:	
(a) A copy of the most recent audited accounts for the organisation that cover the last two years of trading or for the period that is available if trading for less than two years.	YES / NO
b) A statement of the organisation's turnover, Profit & Loss and cash flow position for the most recent full year of trading (or part year if full year not applicable) and an end period balance sheet, where this information is not available in an audited form at (a).	YES / NO / N/A
(c) Where (b) cannot be provided, a statement of the organisation's cash flow forecast for the current year and a bank letter outlining the current cash and credit facility position.	YES / NO / N/A
(d) If the organisation is a subsidiary of a group, (a) to (c) for both the subsidiary and the ultimate parent. Where a consortium or association is proposed, (a) to (c) for each member company.	YES / NO / N/A
e) A separate statement of the organisation's turnover that relates directly to the supply of this service for the past two years, or for the period the organisation has been trading (if less than two years).	YES/NO
(f) Confirmation of the organisation's willingness to arrange for a guarantee or a performance bond	YES / NO
Financial Visibility Assessment	
<ul style="list-style-type: none"> • Low Financial Risk - Full, satisfactory responses provided with no areas of concern* • Medium Financial Risk - Partial, satisfactory responses provided with some cause for concern* • High Financial Risk - Unsatisfactory responses provided with significant cause for concern* • High Financial Risk - No responses provided* Please delete those which are not applicable]	
[* Section 5 – Insurance	
Are the supplier's responses satisfactory?	Comments
YES/NO	

Section 8 – Political Affiliations	
Are the supplier's responses satisfactory?	Comments
YES/NO	

Section 10 – Declaration of Staff Screening	
Are the supplier's responses satisfactory?	Comments
YES/NO	

SCORING CRITERIA:

Section / Description	Scoring Method	Score (A)	Weight (B)	Weighted Score (AxB)
Section 4 – Prime Contractor	2 – Third party/sub-contracting arrangements satisfactory 1 – Third party/sub-contracting arrangements adequate 0 – Concern over third party/sub-contracting arrangements or no responses provided		5	
Section 6 - References	3 - Relevant references 2 – Partially relevant references 1 – Irrelevant references 0 - References not provided		5	
Section 7 – Disputes	2 – No court or employment actions 1 - Some concern over court or employment actions 0 – Significant concern over court or employment actions		5	
Question 9.1 - Trade Affiliations	3 / 2 – Membership of relevant organisations and takes an active part in their activities 2 / 1 – Membership of relevant organisations 1 / 0 - Member of some organisations but questionable how relevant or No response provided		3	
Question 9.2 – Data protection	1 – Registered under the Data Protection Act 1998 or exempt 0 – Not registered under the Data Protection Act 1998 and not exempt		3	

Section / Description	Scoring Method	Score (A)	Weight (B)	Weighted Score (AxB)
Question 9.3 - Locations	2 – Relevant location(s) 1 – Concern over-relevance of location(s) 0 – No response provided		3	
Question 9.4 – Health and Safety	3 / 2 – Documented health and safety system 2 / 1 - Health and safety management system 1 / 0 – Health and safety not specifically addressed		3	
Question 9.5 - Environmental Management	3 / 2 – Certified environmental management system with clear evidence of minimising environmental impact 2 / 1 – Environmental management system present 0 - Environmental management not specifically addressed		3	
Question 9.6 – Equality and Diversity	3 / 2 – Current policy is relevant and fully compliant with Equality Act 2010 2 / 1 – There is no written policy but has provided evidence that it is compliant with the Equality Act 2010. 0 – Equality and diversity policy has not been specifically addressed		3	

SECTION 1 - SATISFACTORY: YES/NO

SECTION 2 - SATISFACTORY: YES/NO

SECTION 3 - SATISFACTORY: YES/NO

SECTION 5 – SATISFACTORY YES/NO

SECTION 8 - SATISFACTORY: YES/NO

SECTION 10 – SATISFACTORY: YES/NO

**TOTAL WEIGHTED SCORE:
SECTIONS 4, 6, 7 and 9**

**MAXIMUM WEIGHTED SCORE POSSIBLE:
SECTIONS 4, 6, 7 and 9**

Note: Tenderers who fail to obtain a YES for any of the sections 1, 2, 3, 5, 8 and 10 will be treated as a Fail and will be disqualified.

Comments:

.....
.....
.....
.....

Evaluation completed by **PRINT NAME:** **DATE:**

Invitation to tender

For Outsourced Switchboard Service for the Electoral
Commission

Contract reference: C0082-PT-FCS

Section One Conditions of Contract for Services

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APPENDIX A

Variation to Contract Form

A **GENERAL PROVISIONS**

A1 **Definitions and Interpretations**

A1.1 Definitions

In these Conditions:

“Approval” and “Approved” means the written consent of the Client.

“Client” means the Electoral Commission and includes, but is not limited to, the Electoral Commission’s Contract Manager.

“Commencement Date” means an appropriate date as agreed between both Parties. This date will be confirmed in writing upon Award of Contract.

“Commercially Sensitive Information” means information:

- (a) which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Condition” means a condition within the Contract.

“Confidential Information” means 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, know-how of either Party, and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of Condition E3 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) 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.

“Contract” means the written agreement between the Client and the Contractor consisting of the following Sections which shall be read as one document:

- (1) Forms of Tender (Section 3 (a) completed by the Contractor in its Tender)
- (2) Conditions of Contract (Section 1 of The Invitation to Tender)
- (3) Scope of Work (Section 2 of the Invitation to Tender)
- (4) Method Statement (Section 3 (c) completed by the Contractor in its Tender)
- (5) Pricing and Staffing Schedules (Section 3 (d) completed by the Contractor in its Tender)
- (6) Administrative Instructions (Section 3 (b) completed by the Contractor in its Tender)
- (7) Any other documents (or parts thereof) specified by the Client.

“Contract Period” means the period from the Commencement Date to:

- (a) the date of expiry as set out in Condition A2 (Initial Contract Period), or
- (b) following an extension pursuant to Condition F8 (Extension of Initial Contract Period), the date of expiry of the extended period.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract before taking into account the effect of any adjustment of price in accordance with Condition C4 (Price Adjustment on Extension of Initial Contract Period).

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Regulations 2006.

“Contractor” means the person, firm or company with whom the Client enters into the Contract.

“Criminal Records Bureau” means the bureau established pursuant to Part V of the Police Act 1997.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers,

government departments, government and particular bodies and government agencies.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any 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.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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 regulations.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Fees Regulations” means the Freedom of Information and Data (Appropriate Limit and Fees) Regulations 2004.

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

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by the Party concerned, 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:

- (b) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Client. For practical purposes Fraud may be defined as the use of deception with the intention of obtaining an advantage, causing loss to another party or exposing another to a risk of loss. Fraud is generally considered to involve theft (the removal of cash or assets to which the fraudster is not entitled) or false accounting (the falsification or alteration of accounting records or other documents). Assets include Commercially Sensitive Information and Intellectual Property Rights which would disadvantage its rightful owner if it were to fall into the hands of, or be sold to, a competitor. The Fraud Act 2006, which came into effect on 15 January 2007, creates a general offence of Fraud with three ways of committing it - fraud by false representation; fraud by failing to disclose information; and fraud by abuse of position. It also creates new offences - obtaining services dishonestly; possessing, making and supplying articles for use in frauds; and fraudulent trading applicable to non-corporate traders.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

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

“Information” has the meaning given under Section 84 of the Freedom of Information Act 2000.

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in Condition A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Invitation to Tender” means the Client’s invitation to suppliers for formal offers to supply it with the Services.

“Intellectual Property Rights” means patents, inventions, trade marks, 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.

“Key Personnel” means those persons named in the Specification as being key personnel.

“Law” means any applicable Act of Parliament, sub-ordinate 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, judgement of a relevant court or law, directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

“Month” means calendar month.

“Party” means a party to the Contract and “Parties” shall be construed accordingly.

“Premises” means the location where the Services are to be supplied, as set out in the Specification.

“Pricing Schedule” means the Section 3 (d) Pricing and Staffing Schedules containing details of the Contract Price.

“Property” means property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.

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

“Receipt” means the physical or electronic arrival of a valid and accurate invoice at the address of the Client detailed at Clause A5.3 or at any other address given by the Client to the Contractor for the submission of invoices.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or

influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party service provider appointed by the Client to provide any services which are substantially similar to any of the Services, and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract

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

“Relevant Convictions” means a conviction that is relevant to the nature of the Services.

“Schedule” means a schedule set out in the Specification.

“Services” means the services to be supplied as specified in the Specification.

“Specification” means the description of the Services to be supplied under the Contract as set out in Section 2 Scope of Work of the Invitation to Tender.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Client, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents and sub-contractors used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the Client’s procedures for the vetting of personnel and as advised to the Contractor by the Client.

“Tender” means the documents(s) submitted by the Contractor to the Client in response to the Invitation to Tender.

“Variation” has the meaning given in Condition F3 (Variation).

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

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

A1.2 Interpretation

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
- (d) reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (h) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Initial Contract Period

A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date specified in the Specification, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Condition F8 (Extension of Initial Contract Period).

A3 Contractor's Status

A3.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind either Party save as expressly permitted by the terms of the Contract.

A4 Client's Obligations

A4.1 Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client 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 Client in any other capacity, nor shall the exercise of the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Contractor.

A5 Notices

A5.1 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 concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 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.

A5.3 For the purposes of Clause A5.2, the address of each Party shall be those referred to in Section 3 (a) Administrative Instructions of the Tender.

A5.4 Either Party may change its address for service by serving a notice in accordance with this Condition.

A6 Mistakes in Information

A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

A7.2 The Client reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The actions of the Client 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 Client.

B PROVISION OF THE SERVICES

B1 The Services

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Specification and the provisions of the Contract in consideration of payment of the Contract Price. The Client may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Client informs the Contractor in writing that the Client reasonably believes that any part of the Services do not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of Default by the Client, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.

B1.3 Subject to the Client providing written consent in accordance with Clause B2.2, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

B2 Provision and Removal of Equipment

B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B2.2 The Contractor shall not deliver any Equipment nor begin work on the Premises without obtaining prior Approval.

B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage is caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

B2.5 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:

(a) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B2.6 On completion of the Services the Contractor shall remove the Equipment and any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the

standard of Services has not been specified in the Contract the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B4 Key Personnel

B4.1 The Contractor acknowledges that Key Personnel are essential to the proper supply of the Services to the Client.

B4.2 Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Client shall not unreasonably withhold its agreement under Clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5 Contractor's Staff

B5.1 The Client may, by written notice to the Contractor, refuse to admit onto, or to withdraw permission to remain on the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

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

B5.2 At the written request of the Client, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises,

specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.

B5.3 The Contractor's Staff, engaged within the boundaries of 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 outside the Premises.

B5.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the supply of the Services. The Contractor confirms that all persons employed or engaged by the Contractor was vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.5 The Client may require the Contractor to ensure that any person employed in the supply of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the supply of any part of the Services.

B5.6 If the Contractor fails to comply with Clause B5.2 within 2 Months of the date of the request and in the reasonable opinion of the Client, such failure is prejudicial to the interests of the Client, then the Client may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

B5.7 The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Clause B5.2 shall be final and conclusive.

B6 Inspection of Premises

B6.1 Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

B7 Licence to occupy Client's Premises

B7.1 Any land or Premises made available from time to time to the Contractor by the Client in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis

free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.

B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.

B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of whatsoever nature in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Client retains the right at any time to use any premises owned or occupied by it in any manner the Client sees fit.

B8 Property

B8.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal hours of business on reasonable notice to recover such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.

- B8.2 The Property made shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in the Contractor's possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

- B9.1 For the duration of the Contract and for a period of 12 Months thereafter the Client nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the performance of the Contractor's obligations under the Contract, the Client shall pay the Contract Price in accordance with Condition C2 (Payment and VAT).
- C1.2 The Client shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- C1.3 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a change of Law, Condition 6 (Change of Law) shall apply.

C2 Payment and VAT

- C2.1 The Client shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.
- C2.2 The Contractor 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 Client to substantiate the invoice.
- C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable, and this shall be shown separately on all invoices as a strictly net extra charge.
- C2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause C2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C3 Recovery of Sums Due

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Client.

- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.
- C3.4 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 as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

- C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to Condition F8 (Extension of Initial Contract Period) the Client shall, in the 6 Month period prior to the expiry of the Initial Contract Period, enter into negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation to the Contract Price.
- C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with Clause 4.1, the Contract shall terminate at the end of the Initial Contract Period.
- C4.3 If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- C4.4 Any increase in the Contract Price pursuant to Clause 4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index set out in the Specification) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

C5 Euro

- C5.1 Any requirement of Law to account for the Services in Euros, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Client.
- C5.2 The Client shall provide all reasonable assistance to facilitate compliance with Clause C5.1 by the Contractor.

C6 Change of Law

- C6.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the provisions of the Contract nor be entitled to an increase in the Contract Price as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- C6.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in Clause C6.1), the Contractor shall notify the Client of the likely effects of that change, including:
- (a) whether any modification is required to the Services, the Contract Price or the Contract; and
 - (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- C6.3 As soon as practicable after any notification in accordance with Clause C6.2 the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:
- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
 - (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
 - (c) giving evidence as to how the Specific Change in Law has affected the cost of supplying the Services; and
 - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.
- C6.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the parties pursuant to this Condition C6 shall be implemented in accordance with Condition F3 (Variation).

D **STATUTORY OBLIGATIONS AND REGULATIONS**

D1 **Prevention of Corruption**

- D1.1 The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or behalf of the Client or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Client or any other public body, or for showing or refraining from showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of any other public body in connection with the Contract.
- D1.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by Clauses D1.1 or D1.2, the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those Clauses.
- D1.4 In exercising its rights or remedies under this Condition, the Client shall:
- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
 - (b) give all due consideration, where appropriate, to action other than termination of the Contract.

D2 Prevention of Fraud

- D2.1 Actions which constitute Fraud include any dishonest or fraudulent act; forgery or alteration of any document or account belonging to the Client; forgery or alteration of a cheque, bank draft, or any other financial document; misappropriation of funds, securities, supplies, or other assets; impropriety in the handling or reporting of money or financial transactions; profiteering as a result of insider knowledge of the Client's activities; disclosing confidential and proprietary information to outside parties; disclosing to other persons any securities activities engaged in or contemplated by the Client; accepting or seeking anything of material value from contractors, vendors or persons providing services and/or materials to the Client, or within the scope of the Bribery Act 2010; destruction, removal or inappropriate use of records, furniture, fixtures, and equipment; and/or any similar or related inappropriate conduct.
- D2.2 The Client takes Fraud very seriously and is committed to ensuring that opportunities for Fraud are reduced to the lowest possible level of risk. All cases of actual or suspected Fraud shall be vigorously and promptly investigated and appropriate action shall be taken. The Contractor shall be required to co-operate with the Client with any such investigation and the instigation of resulting actions.
- D2.3 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Client.
- D2.4 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- D2.5 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Client, the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this Condition.
- D2.6 Each party represents and warrants that it is familiar with, has read and understands, and will comply in all respects with its obligations under, the Bribery Act 2010.

D3 Equality and Diversity

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not discriminate within the scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of Clause D3.1 by all Staff.

D4 The Contracts (Rights of Third Parties) Act 1999

D4.1 No person who is not a Party to the Contract shall have a right to enforce any of its provisions which, expressly or by implication, confer a benefit on him without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

D5 Environmental Requirements

D5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client'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.

D6 Health and Safety

D6.1 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working on the Premises.

- D6.3 The Contractor shall notify the Client 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.
- D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- D6.5 The Contractor 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 Client on request.

E PROTECTION OF INFORMATION

E1 Data Protection Act

- E1.1 For the purposes of this Condition E1, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.
- E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E1.3 Notwithstanding the general obligation in Clause E1.2, where the Contractor is processing Personal Data as a Data Processor for the Client, the Contractor shall ensure that it:
- (a) processes the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Client;
 - (b) complies with all applicable Laws;
 - (c) processes the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under the Contract or as is required by Law or any Regulatory Body;
 - (d) implements appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction,

damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) takes reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- (f) obtains prior written consent from the Client in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- (g) does not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Client;
- (h) ensures that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition E1;
- (i) ensures that none of the staff and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client;
- (j) does not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and
- (k) notifies the Client within 5 Working Days if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or a request relating to the Client's obligations under the DPA.

E1.4 The provision of this Condition E1 shall apply during the Contract Period and indefinitely after its expiry.

E2 Confidential Information

E2.1 Except to the extent set out in this Condition E2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of the Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Access to Government Information or the Environmental Information Regulations pursuant to Condition E3 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E2.3 The Contractor may only disclose the Client's Confidential Information only to the 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.

E2.4 The Contractor shall not, and shall procure that the staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.

E2.5 At the written request of the Client, the Contractor shall procure that those members of Staff identified in the Client's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.

E2.6 Nothing in this Contract shall prevent the Client from disclosing the Contractor's Confidential Information:

- (a) to any Crown Body or any other Public Sector 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;

- (b) to any consultant, contractor or other person engaged by the Client or any person conducting an Office of Government Commerce Gateway Review;
- (c) for the purpose of the examination and certification of the Client's accounts; or
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

E2.7 The Client shall use all reasonable endeavours to ensure that any Crown Body, contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause E2.6 is made aware of the Client's obligations of confidentiality.

E2.8 Nothing in this Condition E2 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.

E3 Freedom of Information

E3.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with these Information disclosure obligations.

E3.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receiving a Request for Information:

- (a) provide the Client with a copy of all Information in its possession or power in the form that the Client requires within 5 Working Days (or such other period as the Client may specify) of the Client's request; and
- (b) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request for

Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.3 The Client shall be responsible for determining at its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

E3.5 The Contractor acknowledges that (notwithstanding the provisions of Condition E2 (Confidential Information)) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account;

Provided always that where Sub-Clause E3.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw disclosure to the Contractor’s attention after any such disclosure.

E3.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

E3.7 The Contractor acknowledges that any lists or Schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Client may be obliged to disclose it in accordance with this Condition E3.

E4 Publicity, Media and Official Enquiries

E4.1 Without prejudice to the Client’s obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written

consent of the other Party and except for the Client to advertise the contract award.

E4.2 Both Parties shall take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause E4.1.

E5 Security

E5.1 The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Client while on the Premises, and shall ensure that all Staff comply with such requirements.

E5.2 The Contractor shall immediately notify the Client of any breach of security in relation to Confidential Information and all data obtained in the performance of its obligations under the Contract and shall keep a record of such breaches. The Contractor shall use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition E2 (Confidential Information). The Contractor shall co-operate with the Client in any investigation that the Client reasonably considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E5.3 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of its obligations under the Contract, the Contractor shall maintain its security systems to, in the reasonable opinion of the Client, a suitable and sufficient standard.

E6 Intellectual Property Rights

E6.1 Subject to Clause E6.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

- (a) furnished to or made available to the Contractor by the Client shall remain the property of the Client; and
- (b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance of its obligations under the Contract shall belong to the Client,

and the Contractor shall not, and shall ensure that its Staff shall not, (except when necessary for the performance of the Contract) without

prior Approval, use or disclose any such Intellectual Property Rights, in the IP Materials.

- E6.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Sub-Clause E6.1(b). This assignment shall 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 Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- E6.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor in the performance of the Contract.
- E6.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable, shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.
- E6.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in the supplying of the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim arises from:
- (a) items or materials based upon designs furnished by the Client; or
 - (b) the use of data supplied by the Client that is not required to be verified by the Contractor under any provision of the Contract.
- E6.6 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

- E6.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Client; and
 - (c) shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).
- E6.8 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and client basis) incurred in doing so. The Contractor shall not, however, be required to indemnify the Client in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to matters in Sub-Clauses E6.5(a) or E6.5(b).
- E6.9 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under the Contract.
- E6.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

- (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client.

And in the event that the Contractor is unable to comply with Sub-Clauses E6.10(a) or E6.10(b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract by immediate effect by notice in writing.

E6.11 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with the right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order to exercise its rights and take benefit of the Contract including the Services provided.

E7 Audit

E7.1 The Contractor shall keep and maintain until 7 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

E8 Political Activities

E8.1 The Client accepts that membership of a political party by itself shall not be a bar for the Contractor to assign an employee who will be directly or indirectly involved with this Contract. However, the Contractor shall not assign or keep assigned to this Contract an employee who has within the last twelve months:

(a) consented to being nominated as a candidate for a relevant election within the meaning of the Political Parties, Elections and Referendums Act, 2000 or to being included in a registered party's list of candidates at such an election. The list of relevant elections is:

- member of the House of Commons
- member of the European Parliament elected in the United Kingdom (including the combined region i.e. the South West electoral region which includes Gibraltar)
- member of the Scottish Parliament
- member of the National Assembly of Wales
- member of the Northern Ireland Assembly
- Mayor of London or elected mayor within the meaning or Part II of the Local Government Act 2000
- member of:
 - (i) any local authority in any part of the United Kingdom, including the Common Council of the City of London but excluding a parish or community council, or
 - (ii) the Greater London Assembly

(b) taken up any office or employment with:

- a registered party or any accounting unit of such a party
- a recognised third party under the Act
- a permitted participant in a referendum as defined in the Act

- (c) been named as a donor in the register of donations or in any statement of donations included in a return delivered to the Commission under the Act
- (d) been named as a participant in the register of recordable transactions reported under Part 4A PPERA
- (e) engaged in any activity that might call into question his/her political impartiality

E8.2 The Contractor shall put in place procedure for monitoring the political activity of employee who will be working on this Contract and shall notify the Client should events in clause E8.1 occur. The procedure shall be extended to close family member or associate closely involved with political party. For clarification purposes, a close family member is defined as spouse, civil partner, partner, children or step children, parents, or any other person with whom the employee lives in an enduring family relationship; and an associate is defined as someone who is not a family member but with whom the employee has frequent or significant contact, or shared interests, and where a connection which is not disclosed might give rise to perceptions of a conflict of interest.

E8.3 The Contractor shall notify the Client within a reasonable time if it intends to become or has become closely associated with and in support of any registered political party or any third party recognised under the Political Parties, Elections and Referendums Act 2000 (PPERA). This will be considered by the Client as to whether it gives cause to political partisanship that could affect the Client's independence and/or impartiality.

F CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except for where Clauses F1.4 and F1.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior written Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as is reasonably practicable.

- F1.4 Notwithstanding Clause F1.1, the Contractor may assign to a third party (“the Assignee”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including any interest which the Client incurs under Clause C2.6). Any assignment under this Clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which the Client exercises its right of recovery under Condition C3 (Recovery of Sums Due);
 - (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Client receiving notification under both Clauses F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract Price under Clause F1.4, the Contractor or Assignee shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies the Client of the Assignee’s contact information and bank account details to which the Client shall make payment.
- F1.7 The provisions of Clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.
- F1.8 Subject to Clause F1.10, the Client may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Client; or
 - (c) any private sector body which substantially performs the function of the Client,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under the Contract.
- F1.9 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the

validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as “the Transferee”):

- (a) the rights of termination of the Client in Conditions H1 (Termination on Change of Control and Insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) 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 prior consent in writing of the Contractor.

F1.11 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F2 Waiver

F2.1 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.

F2.2 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 the provisions of Condition A5 (Notices).

F2.3 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.

F3 Variation

- F3.1 Subject to the provisions of this Condition F3, the Client may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called “a Variation”.
- F3.2 The Client may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- F3.3 The Contractor may request a Variation provided that:
- (a) the Contractor shall notify the Client in writing of any additional or changed requirement which it considers should give rise to a Variation within 5 Working Days of such occurrence first becoming known to the Contractor.
 - (b) any proposed Variation shall be fully supported by a written quotation. Such a quotation shall contain at least the following information:
 - (i) a description of the work together with the proposed Variation;
 - (ii) the proposed change to the Contract Price, where applicable; and
 - (iii) details of the impact, if any, on other aspects of the Contract.
- F3.4 Approval of a Variation shall be communicated in writing by the Client to the Contractor by means of a Variation to Contract Form as set out in Appendix A in accordance with the provisions of Condition A6 (Notices).
- F3.5 In the event that the Parties are unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification; or

- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where resolution cannot be reached, the matter shall be dealt with in accordance with the provisions of Condition I2 (Dispute Resolution).

F4 Severability

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the Event of Inadequate Performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may uphold the complaint, or take further action in accordance with the provisions of Condition H2 (Termination on Default) of the Contract.

F5.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under Condition H2 (Termination on Default) do any of the following:

- (a) without terminating the Contract, itself supply or procure the provision of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

(d) terminate, in accordance with Condition H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to its rights under Condition C3 (Recovery of Sums Due), the Client may charge to the Contractor any cost reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.

F5.5. In the event that:

(a) the Contractor fails to comply with Clause F5.4. above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with Clause F5.4 above,

the Client reserves the right to terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

F6.1 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.

F7 Monitoring of Contract Performance

F7.1 The Contractor shall provide the Client with all the information that the Client may reasonably require for the purpose of assessing the Contractor's performance of its obligations under the Contract. The Contractor shall operate a performance monitoring system which meets the requirements of the Client as detailed in the Specification

and as notified to the Contractor by the Client. This includes the collection and processing of performance information.

- F7.2 The Contractor shall collect and process data that relates to the supply of the services and performance measurement. The Contractor shall ensure that the data and their data processing are accurate.
- F7.3 The Contractor shall supply reports as required within 5 Working Days of the end of the period to which they apply and the Contractor shall also produce ad-hoc reports as requested by the Client on specific requirements. These shall be in the format requested by the Client.
- F7.4 Performance monitoring shall be sufficient to test compliance with the provisions of the Contract (which shall include responsibility to advise the Client of any failure to meet the required standards).
- F7.5 The Client may require the Contractor to attend periodic review meetings at its premises. If this is the case, the Client shall provide an indicative meeting schedule and shall reasonably endeavour to issue an agenda at least 5 Working Days in advance of each meeting date. The Contractor shall provide all necessary performance data and information to the Client at least 3 Working Days before the meeting date. Attendance at these meetings shall be at the Contractor's cost. The Client shall arrange to take a written record of the meeting and provide the same to the Contractor for verification.

F8 Extension of Initial Contract Period

- F8.1 Subject to satisfactory performance its obligations under the Contract by the Contractor during the Initial Contract Period, and subject to Condition C4 (Price Adjustment on Extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than 1 Month prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 1 year. The provisions of the Contract shall apply (subject to any Variant pursuant to Condition F3 (Variation) or adjustment to the Contract Price pursuant to Condition C4 (Price Adjustment on Extension of the Initial Contract Period)) throughout any such extended period.

F9 Entire Agreement

- F9.1 The Contract constitutes the entire agreement between the Parties relating to the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one party or the other, whether written or oral,

except that this Condition F9 shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2

In the event of and only to the extent of any conflict between the Specification, and other documents referred to or attached to the Contract, the conflict shall be resolved in accordance with the following order of precedence:

- (1) Forms of Tender (Section 3 (a) completed by the Contractor in its Tender)
- (2) Conditions of Contract (Section 1 of the Invitation to Tender)
- (3) Specification (Section 2 of the Invitation to Tender)
- (4) Method Statement (Section 3 (c) completed by the Contractor in its Tender)
- (5) Pricing and Staffing Schedules (Section 3 (d) completed by the Contractor in its Tender)
- (6) Administrative Instructions (Section 3 (b) completed by the Contractor in its Tender)
- (7) Any other documents (or parts thereof) specified by the Client.

Unless expressly agreed, a document varied pursuant to Condition F3 (Variation) shall not take higher precedence than specified here.

F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) for Fraud; or
- (c) for fraudulent misrepresentations; or
- (d) for any breach of any obligations implied by Section 2 of the Goods and Services Act 1982.

G1.2 Subject to Clause G1.3, the Contractor shall indemnify the Client and keep indemnified the Client fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, in respect of or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract, or the presence of the Contractor or any staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that is caused by the negligence or wilful misconduct by the Client or by breach by the Client of its obligations under the Contract.

G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenses resulting from the direct Default of the Contractor.

G1.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor'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 Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the expiration or earlier termination of the Contract.

G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.7 The Contractor shall give to the Client, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause G1.2.

G2 Professional Indemnity

G2.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than a limit of indemnity that is adequate for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 years following the expiration or earlier termination of the Contract.

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that:

- (a) it has the 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 and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) it shall discharge its obligations under the Contract with all due skill, care and diligence including but not limited to Good Industry Practice;
- (c) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) in entering the Contract it has not committed any Fraud;
- (e) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to the execution of the Contract;
- (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which shall or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (g) it is not the subject of any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for winding up of the Contractor 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 Contractor's assets or revenue;
- (i) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (j) in the 3 years prior to the date of the Contract:
 - (i) 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;

- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or if any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

- (g) being a “small company” within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Sub-Clauses H1.1(a)-H1.1(g) occurs under the law of any other jurisdiction.

H1.2 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) 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 Contractor’s creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
- (c) a receiver or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay its debts or has no prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or any substantial part of his business.

H1.3 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvency Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement or assignment with, or for the benefit of, its creditors; or

- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of Section 222 or Section 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) 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 for the benefit of, his creditors; or
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver or similar officer is appointed over the whole or any part of his assets.

H1.4 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefits of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) an application is made either for the appointment of an administrator or an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
- (d) any step is taken with a view to it being determined that it would be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or

- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- (f) a receiver or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

References to the Insolvency Act 1986 in Sub-Clauses H1.4(a) – H1.4(h) shall be construed as being references to the Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H1.5 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of Section 146 of the Income and Corporation Taxes Act 1988 (“change of control”). The Client may terminate the Contract by notice in writing with immediate effect within 6 Months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Client 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.

H2 Termination on Default

H2.1 The Client may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Client within 25 Working Days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Client, capable of remedy; or
- (c) the Default is a material breach of the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Client fails to pay the Contractor undisputed sums of money due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of the written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right to termination shall not apply where the failure to pay is due to the Client exercising its rights under Clause C3.1.

H3 Break

H3.1 The Client shall have the right to terminate the Contract at any time by giving 3 Months' written notice to the Contractor.

H4 Consequences of Expiry or Termination

H4.1 Where the Client terminates the Contract under Condition H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Condition H2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where payment has yet to be made by the Client) until the Client has established the final cost of making those other arrangements envisaged under this Clause.

H4.2 Subject to Condition G1 (Liability, Indemnity and Insurance), where the Client terminates the Contract under Condition H3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss

which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Condition H3 (Break).

H4.3 The Client shall not be liable under Clause H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract 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
- (b) termination of the Contract shall not affect the continuing rights, remedies and obligations of the Client or the Contractor under Conditions C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E8 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.

H5.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own

employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, or the Contractor shall seek the Client's Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in Clause H5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

H6.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Client all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Client to ensure an orderly transition of the supply of the Services to the Replacement Contractor and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the supply of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.

H6.2 If the contractor fails to comply with Sub-Clauses H6.1(a) and H6.1(b). the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to

enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under Sub-Clauses H6.1(c) and H6.1(d) free of charge. Otherwise the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

H7.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.3 If either of the Parties becomes aware of Force Majeure which gives rise to, or which is likely to give rise to, any such failure or delay on its part as described in Clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of Condition I2 (Dispute Resolution), the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 Dispute Resolution

- 12.1 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 20 Working Days of either Party notifying the other of the dispute.
- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved through negotiation, the dispute shall be referred to mediation pursuant to the procedure set out in Clause 12.5 unless:
- (a) the Client considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Contractor does not agree to mediation.
- 12.4 The obligations of the Parties under the Contract shall not cease or be suspended or be delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) 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 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 10 working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) or other mediation provider to appoint a Mediator.
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with them 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 CEDR or other mediation provider to provide guidance on a suitable procedure.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) If the Parties fail to reach agreement in the structured negotiations within 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 unless the dispute is referred to arbitration pursuant to the procedures set out in Clause I2.6

I2.6 Subject to Clause I2.2, the Parties shall not institute court proceedings until the procedures set out in Clauses I2.1 and I2.3 have been completed save that:

- (a) the Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause I2.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause I2.7.
- (c) the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause I2.7, to which the Client may in its discretion consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to Clause I2.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Client shall give a written notice of arbitration to the Contractor (“the Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with Sub-clause I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under Sub-Clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

Appendix A

Variation to Contract Form

CONTRACT TITLE:

FOR THE PROVISION OF:

CONTRACT REF: VARIATION No..... DATE: / /

BETWEEN:

The Electoral Commission (hereinafter called the Client) and **(DN:INSERT NAME OF CONTRACTOR)** (hereinafter called the Contractor) having his main or registered office at **(DN:INSERT ADDRESS)**:

1. The Contract is varied as follows:

Scope of Work:	
The Price (ex VAT): Contract Price: £ Variation Price (maximum): £ Revised Contract Price: £	Effect on Programme:

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.

SIGNED:

For: The Client

For: The Contractor

By:

By:

Full Name:

Full Name:

Job Title:

Job Title:

Date:

Date:

DN: If provided with copies already signed on behalf of the Client sign both and return one copy to the Client. If unsigned, sign both and return both to the Client for completion.

Invitation to tender

For Outsourced Switchboard Service for the Electoral Commission

Contract Reference: C0082-PT-FCS

Section two

Scope of work

1. Background

- 1.1 The Electoral Commission is seeking a supplier to provide an outsourced switchboard service answering calls to the organisation's main number and transferring these to the correct member of Commission staff.
- 1.2 The supplier will provide a service for up to 150 of the Commission's staff who are based in offices in London, Cardiff, Edinburgh and Belfast.
- 1.3 The service will replace the current outsourced switchboard which is provided by a contact centre contracted to the incumbent telephone system supplier. The contract for this service is coming to an unexpected end and a replacement is required in good time prior to the May 2016 elections.
- 1.4 The Electoral Commission is an independent body set up by the UK Parliament in 2000 by the Political Parties, Elections and Referendums Act. We are independent of Government and political parties and are directly accountable to the UK Parliament through a committee chaired by the Speaker of the House of Commons.

Our key objectives are to ensure:

- well-run elections, referendums and electoral registration
- transparency in party and election finance, with high levels of compliance

2 Requirements

- 2.1 All Commission staff are allocated a DDI number but the organisation also advertises a single number (020 7271 0500) for those who do not have the contact details of individual members of staff or teams.
- 2.2 The switchboard service will handle all calls to this number answering with an agreed Electoral Commission greeting.
- 2.3 The agents answering calls will ask the reason for the call, identify the correct member of staff and connect the caller to the required DDI number.
- 2.4 The Commission will supply a regularly updated staff list which includes:

Staff Name

DDI number
Job title
Department
Team

The staff lists can be supplied in XLS or CSV format.

2.5 Examples of likely requests are:

- 'Can I speak to Mr X'
- 'I'd like to speak to someone about an unpaid invoice'
- 'Can you put me through to your Chief Executive'
- 'Can I speak to somebody in the facilities team?'
- 'I need to find out if I am registered to vote'
- 'I'd like to speak to someone about registering a political party'

2.6 The majority of requests can be managed by reference to the staff list but there will be some, such as the last two above, which will require a basic knowledge of the Commission's functions. We are open to suggestions from suppliers on the best way to handle these type of requests but we will provide guidance when required and generally attempt to predict the requests likely to occur prior to particular electoral events. We will pass this information to the supplier for staff training purposes. We will expect to keep a channel of communication open so that, if a new type of query arises, we can advise where this should be directed.

2.7 After identifying the best member of staff to deal with the call, the caller is transferred to the correct DDI number. There is no requirement to wait for the Commission staff member to answer the call.

2.8 As a minimum, the service will be provided from 8.30 to 5.30 Monday to Friday. In exceptional circumstances we may require a service outside these hours.

2.9 The supplier will provide reports which show, as a minimum, how many calls were answered, how many were abandoned, the time to answer, the time to handle and the DDI number transferred to. These reports will be available on a monthly basis.

2.10 The Commission's call volumes increase and decrease to a fairly regular annual pattern which is largely dictated by the electoral cycle. Details of volumes are included below but they tend to build between February and May and fall off in the summer and autumn. Suppliers must guarantee that they can make sufficient operators available to manage these peaks without a deterioration of service.

- 2.11 Billing should take place on monthly basis and reconcile with the reports described at 2.9.
- 2.12 Once a year, we run a telephone cascade exercise to test our business continuity procedures and staff are asked to call in to the switchboard and report once they have received their cascade phone call. Switchboard staff record who has called so that we can measure the success of the exercise. This takes place out of hours from 6 pm to 10 pm on a weekday.
- 2.13 The contract will run for a period of two years with the option to extend for two further periods of one year.

3 Volumes

- 3.1 The table below shows the most recently available figures for call volumes on the basis of a 9 hour day.

Month	Calls	Working Days	Calls per day	Calls per hour
Oct-14	871	23	38	4
Nov-14	766	20	38	5
Dec-14	572	21	27	3
Jan-15	951	21	45	5
Feb-15	1102	20	55	6
Mar-15	1457	21	69	8
Apr-15	1972	22	90	11
May-15	1919	20	96	11
Jun-15	604	22	27	3
Jul-15	555	23	24	3
Aug-15	504	20	25	3
Sep-15	565	21	27	3

- 3.2 The average call handling time by the current is supplier is approximately 40 seconds
- 3.3 Please note that the volumes shown above will vary from year to year and should not be used as a guarantee of future call volumes.

4 Timings

Invitation to Tender issued	11 January 2016
Tender submission closing date	27 January 2016
Notification to tenderers	02 February 2016
Service planning	08 February to 26 February 2016

5 Proposal

5.1 The proposal should address the following:

- Understanding of the requirements for this contract.
- Ability to meet these requirements
- Ability to manage the fluctuations in call volumes without a deterioration in service
- Ability to provide the Electoral Commission with good value for money
- A comprehensive pricing proposal to include all one-off and ongoing costs
- A description of the reports and billing documents which the Commission will receive
- A description of how the supplier will manage the staff lists the Commission will supply
- A description of how the supplier will manage the training requirements for handling more complex customer queries to identify the correct staff member or team to forward the call to
- Ability to meet the Commission's timeframe for launch of the service
- A description of any service level agreement between the supplier and the Commission

6 Evaluation of tenders

This tender process will be conducted via the open tender process. Tenders will be evaluated by the criteria set out in the evaluation matrix (see Annex C of the Instructions to Tenderers). Evaluation is based on the following four broad categories:

- Service delivery
- Ability to meet timescales
- Management, supervision and resources
- Cost

Invitation to Tender

For Outsourced Switchboard Service for the Electoral
Commission

Contract Reference C0082-PT-FCS

Section Three Tenderer's response

SECTION THREE

Tenderer's response

Table of contents

- 3 (a) Form of Tender
- 3 (b) Administrative Instructions
- 3 (c) Method Statement Layout
- 3 (d) Pricing and Staffing Schedules

FORM OF TENDER - PART I

THE AGREEMENT

(To be completed on Contractors letter headed paper)

Dear

Tender for Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

Having examined the proposed Contract comprising of:

- the Scope of Work enclosed under cover of your Invitation to Tender letter dated 11 January 2016 and
- this Form of Tender comprising of Parts I, II and III, Section One Conditions of contract for services and Administrative Instructions and Section Four, issued on 11 January 2016.

We do hereby offer to enter into a contract with the Commission on the terms and conditions in the said Contract subject only to Tenderer Qualifications as may be stipulated in the Form of Tender - Part II.

We undertake to keep the submission open for acceptance by the Commission for a period of sixty (60) days from the return date.

We declare that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the tender submission by or under or in accordance with any agreement or arrangement with any other person. We further declare that we have not done, and we undertake that we will not do any of the following acts prior to award of this Contract:

- (a) Collude with any third party to fix the price of any number of quotations for this Contract.
- (b) Offer, pay or agree to pay any sum of money or consideration directly or indirectly to any person for doing, having done or promising to be done any act or thing of the sort described herein and above.

[Delete if not applicable] We confirm that our Parent Company will sign the Parent Company Guarantee, Form of Tender - Part III, prior to the award of the Contract and as a pre-condition thereto.

Unless and until a formal Agreement has been executed by us both in substitution, therefore your written acceptance of this tender with all its enclosures shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any price.

Signed: Date:

Name (PRINT NAME):

in the capacity of: (INSERT POSITION WITHIN COMPANY)

duly authorised to sign Tenders for and on behalf of (INSERT COMPANY NAME AND ADDRESS):

.....
.....
.....
.....

FORM OF TENDER - PART II

Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

Tender Qualifications to the proposed Contract documents

The Tenderer shall list all matters (technical, commercial or contractual) in which their tender varies with the wording of the proposed Contract documents.

Clause Reference		Cost Adjustment (£)

Note: The Commission may reject a tender, which is non-compliant with the proposed Contract documents. Tenderers submitting qualifications should therefore give explicit justification and reasoning for entering a qualification, and should also give details of the costing necessarily involved for withdrawing any such qualifications, and or any relevant adjustments to the tendered rates/prices.

FORM OF TENDER - PART III
PARENT COMPANY GUARANTEE

(To be submitted in full on Contractor's ultimate Holding Company's headed paper)

Dear

The Electoral Commission

Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

With reference to the Tender for the above services submitted by **[insert name of Contractor]** (hereinafter referred to as "the Contractor"), as a condition precedent for and in consideration of The Electoral Commission, (hereinafter referred to as "the Client") entering into a contract (hereinafter referred to as "the Contract") with the Contractor for the above services, we, as the Contractor's ultimate holding company do hereby enter into the following unconditional and irrevocable undertakings with the Client. That on condition that the Client enters into the Contract with the Contractor for the above services and in consideration of the same:

1. The Contractor shall perform all its obligations contained in the Contract.
2. If the Contractor shall in any respect fail to perform the said obligations contained in the Contract or commits any breach thereof, we shall ourselves perform on simple demand by the Client or take whatever steps may be necessary to achieve performance of the obligations under the Contract of the Contractor, and shall indemnify and keep indemnified the Client against any loss, damages, costs and expenses howsoever arising from the said failure or breach for which the Contractor may be liable.
3. We shall not be discharged or released from our undertakings hereunder by any waiver or forbearance by the Client whether as to payment, time, performance or otherwise.
4. This guarantee shall be unconditional and irrevocable and shall continue in force notwithstanding any variations or additions to or deletions from the scope of services to be performed under the Contract until all the Contractor's obligations thereunder have been performed; and
5. This document shall be construed and take effect in accordance with English Law and we submit to the jurisdiction of the English Courts.

Yours faithfully

Signed: Position:

Name: Date:

For and on behalf of **[insert name of the Contractor's ultimate holding company]**

Section 3(b) – Administrative instructions

1 Authorisation

1.1 The following person is authorised to act as the Commission's Representative on all matters relating to the Contract.

Philip Tucker
Head of ICT and Facilities
The Electoral Commission
3 Bunhill Row
London
EC1Y 8YZ

1.2 The Commission's Representative may authorise in writing other officers to act on his behalf.

2 Address for payment

2.1 Invoices shall be sent to the Commission, clearly indicating the purchase order reference number, addressed to:

accounts@electoralcommission.org.uk; or

Finance Department
The Electoral Commission
3 Bunhill Row
London
EC1Y 8YZ

3 Correspondence

3.1 All correspondence to the Commission shall be sequentially numbered and sent to the following address:

Address at 1.1

3.2 All correspondence to the Contractor shall be appropriately referenced and sent to the following address:

(to be completed by the Tenderer)

.....
.....
.....
.....
.....
.....

Section 3(c) – Method statement

The submission and method statements must be clearly **structured according to the format given below and must be headed Sections 1, 2, 3 etc.** The information provided will be an important factor at the evaluation stage and Tenderers should ensure that they have provided the information requested in **full**.

Contents

- 1 Service Delivery Proposal
- 2 Timescales
- 3 Management, Supervision and Labour Resources

The Tenderer is required to produce method statements which should clearly describe how you are proposing to undertake the works, taking into consideration:

1. Service Delivery Proposal

- Provide your proposal for delivery of the requirement as detailed in Section 2: Scope of Work.
- Provide detailed examples of similar work that you have undertaken (two examples) in order to provide us with an appreciation of your abilities to successfully fulfil the Commission's requirements.
- Please address how you will ensure value for money throughout the life of the contract.
- Please also outline your understanding of the key risks for the project and suggestions for mitigation.

2. Implementation plan and timescales

- Provide an outline of how you propose to meet the Commission's timescales. Provide details of the implementation plan that shows how you propose to meet key deadlines.

3. Management, Supervision and Resources

- Demonstrate your flexibility to adapt to fluctuations in call volumes across the year (see Scope of Works section 3.1).
- Provide details of your processes and procedures to manage the Commission staff list and train staff to understand which individual or team is the correct recipient for a call.
- Provide details of key personnel who will carry out the work, with descriptions of their roles and responsibilities.
- Provide details of any sub-contractors that you would propose to use for this work with particular emphasis on data protection.
- Provide details of your proposed quality control systems.
- Provide your assumptions regarding Commission input.
- Provide business continuity procedures and disaster recovery plan which will ensure continuous service delivery.
- Provide the environmental, equality and diversity approach taken in relation to the delivery of this service to the Commission

Section 3(d) – Pricing and staffing schedules

1 General

- 1.1 The rates entered in the appendices and schedules will be deemed to include for full compliance with the requirements of the Contract, subject to variation as detailed in Section One (Conditions of Contract). The total cost shall be for the duration of the contract.
- 1.2 The rates exclude VAT.

2 Appendix A

- 2.1 The Tenderer is provided with Appendix A and is requested to complete all sections as appropriate.

APPENDIX A

Section 3(d): Pricing and Staffing Schedules

Please complete the information requested below.

- 3.1 Total cost (excluding VAT) for fulfilling the Contract requirements (Outsourced switchboard service for the Electoral Commission) **including all** incidental and travel/accommodation expenses. For comparison purposes in evaluating tenders, the Commission will model these against the volumes shown in section 3.1 of the Scope of Works.

Item	Stg£
System set up (One off)	
Any other one off charges (please specify)	
Call handling charge (per minute)	
Call transfer charge (per transfer)	
Call charge after transfer if applicable (per minute)	
Provision of reports	
Any other monthly charges (please specify)	

(*1) Travel and subsistence costs must be in line with those stated in the Electoral Commission Travel and Subsistence policy – Appendix B.

- 3.2 Please complete the breakdown of the key staff that will be used to fulfil the contract requirement:

Staff name	Role

3.3 Please highlight any other costs/comments you wish the Commission to consider.

.....
.....
.....
.....
.....

3.4 **These rates exclude VAT.**

Appendix B – Travel and Subsistence Policy

It is a Commission requirement that any costs incurred on travel and subsistence relate wholly and exclusively to business purposes, are demonstrably limited to additional cost incurred by the claimant and are actively managed to the minimum practical level.

In particular when travelling on behalf of the Commission:

- Rail tickets should be booked for standard class only and as soon as travel details are confirmed in order to ensure the lowest price. Open tickets should be used by exception only where it is not possible to commit to specific travel times.
- Air tickets should be booked for economy class only, and again as far in advance as is reasonably practical to ensure the lowest price.
- Bookings for classes of rail or air other than standard or economy should only be considered if the price can be shown to be the lowest cost option or the only available means of travel.
- The use of taxis is restricted and should only be used where the use of public transport is not appropriate (in particular for safety purposes or where heavy or valuable equipment is being carried).
- When using personal transport for business purposes a mileage allowance (currently 45p per mile) is payable subject to demonstration of a valid car insurance policy allowing business travel.
- The expenses policy does not include responsibility for personal losses when travelling on Commission business. Suppliers may wish to consider appropriate insurance at your own expense.
- The Commission will not be liable for any loss or damage suffered by an employee in the event of an accident when travelling on Commission business, save for death or personal injury resulting from the Commission's negligence.
- The Commission will not reimburse the costs of penalties incurred while on Commission business (e.g. penalty fares for not holding a valid rail ticket, driving or car parking fines).
- You should retain all travel and subsistence receipts for possible inspection until your invoice is fully paid by the Commission;

The Commission will pay the costs of commercial overnight accommodation as indicated below:

Type of accommodation	London	Elsewhere
Hotel, - Bed & Breakfast	£130.00	£90.00

- The Commission will reimburse the cost of meals during a journey on Commission business provided that:

- ✓ A total of more than 4 hours is spent away on Commission business
 - ✓ It would not be reasonable for you to return home or to your normal place work in that time;
 - ✓ The meals claimed are appropriate to the time away e.g. if you travel in the morning and are back by early afternoon it might be appropriate to claim for breakfast and/or lunch but not dinner.
 - ✓ You are staying away from home and meals are not included in the price of your overnight accommodation
- If you are travelling and staying away from home overnight the daily allowance is up to £30, which must cover the cost of breakfast, lunch and dinner if not already included in the price of the accommodation.
 - ✓ If you are travelling but not staying away overnight the individual meal allowances are: breakfast (up to £5), lunch (up to £10) and dinner (up to £15)
 - ✓ All meal claims must be supported by valid receipts

Suitability Assessment Question Form–

Tender for Outsourced Switchboard Service for the Electoral Commission

Contract Reference C0082-PT-FCS

Purpose of this document

The Electoral Commission requires the information sought in this Suitability Assessment Question Form from tenderers responding to Invitation to Tender for Outsourced Switchboard Service for the Electoral Commission tender.

This is an enquiry only. The Commission, at its sole discretion, reserves the right to cancel this procurement exercise, and shall not be liable to accept any costs incurred in the submission of your application.

Instructions for completion are available on the Suitability Assessment Questionnaire Guidance.

Content and format of responses

Responses to this Form must be clearly marked **C0082-PT-FCS – Suitability Assessment** and returned together with the tenderer's proposal as instructed in the ITT Accompanying Letter – Read me first document.

1 ORGANISATION IDENTITY

1.1 Name of the company (Prime or single contractor) in whose name the tender would be submitted:		
1.2 Contact name and position (Job Title):		
1.3 Address:		
1.4 Telephone number:		
1.5 Facsimile number:		
1.6 E-mail address:		
1.7 Website address (if any)		
1.8 Company Registration number:		
1.9 Charities or other Registration number (if this applies). Please specify registering body:		
1.10 Date of Registration:		
1.11 Registered address if different from the above:		
1.12 VAT Registration number:		
1.13 Is your organisation:	<input type="checkbox"/> a public limited company? <input type="checkbox"/> a limited company? <input type="checkbox"/> a sole trader? <input type="checkbox"/> a partnership?	
1.14 For how long has your organisation been trading	i) in its present form?	
	ii) in any previous form?	
	iii) date established?	
1.15 Is your company a subsidiary of another company?	Y/N	
1.16 The holding or parent company:		
1.17 The ultimate parent company (if applicable):		
1.18 Executive Directors/ Partners:		
Name	Responsibility	

2. COMPLIANCE WITH UK PROCUREMENT LEGISLATION

2.1 Do any of the circumstances as set out in the Public Contracts Regulations 2015 Regulation 57 apply to your company (see guidance)? The Commission may seek evidence at a later date, in confirmation of your answer.	Y/N
If yes, please supply details:	

3. FINANCIAL

The following financial information must be provided:
(a) A copy of the most recent audited accounts for your organisation that cover the last two years of trading or for the period that is available if trading for less than two years.
(b) A statement of the organisation's turnover, Profit & Loss and cash flow position for the most recent full year of trading (or part year if full year not applicable) and an end period balance sheet, where this information is not available in an audited form at (a).
(c) Where (b) cannot be provided, a statement of the organisation's cash flow forecast for the current year and a bank letter outlining the current cash and credit facility position.
(d) If the organisation is a subsidiary of a group, (a) to (c) are required for both the subsidiary and the ultimate parent. Where a consortium or association is proposed, the information is requested for each member company.
(e) A separate statement of the organisation's turnover that relates directly to the supply of this service for the past two years, or for the period the organisation has been trading (if less than two years).
(f) Parent company and/or other guarantees of performance and financial standing may be required if considered appropriate. Confirmation of the organisation's willingness to arrange for a guarantee or a performance bond at its expense.

4. PRIME CONTRACTOR

4.1 Brief history and principal areas of activities of your organisation: (max 500 words)		
4.2 Please indicate if your organisation intends to use third parties to provide services for this contract. If you answer YES to this question, please complete the table below :		
Subcontractor name	Subcontractor address and contact details	Service provision responsibility
4.3 If applicable, please give a brief outline on your policy regarding the use of sub-contractors and the extent to which you might envisage using them for this contract. (max 400 words):		

5 - Insurance

5.1 Please provide details of your organisation's insurance protection (you are required to enclose a copy of the insurance certificates or letter from insurance broker confirming information):

Insurance type	Policy No	Insurer	Expiry date	Value (Stg£)
Employers Liability Insurance held.				
Public Liability Insurance held				
Professional Indemnity Insurance held (minimum of £250k)				

6..REFERENCES

6.1 Details of three major recent contracts, whether for private or public sector clients, that you have been awarded for the provision of services similar to those required by the Commission:

	Reference 1	Reference 2	Reference 3
Customer organisation (name and address):			
Customer contact name, telephone number and e-mail address:			
Date contract awarded:			
Contract reference and brief description of service undertaken:			
Value (Stg£):			
Date contract was completed (or expected termination date if still running):			

NB. The Commission may elect to contact any of the given companies for a reference. Your permission to do so will be assumed unless you explicitly state any objections. If you have provided services for the Electoral Commission in the past, you may add it as one of the references.

7. DISPUTES

7.1 Has your organisation been involved or have any outstanding court action and/or significant employment tribunal action over the last 3 years? If YES, please provide details.

8. POLITICAL AFFILIATIONS

<p>8.1 Does your organisation, or (any of) the director(s) / partner(s) / proprietor(s) have affiliations with any registered political party or any third party recognised under the Political Parties, Elections and Referendums Act 2000?</p> <p>The work carried out by the Commission must be strictly politically impartial, therefore any affiliations with any registered political party or any third party recognised under the Political Parties, Elections and Referendums Act 2000 of the tendering organisation, or that of their staff assigned to do work for the Commission, will need to be disclosed by the tenderer. These affiliations will be considered by the Commission, and may deem the organisation ineligible for this contract.</p>	Y/N
<p>8.2 If the answer to Question 8.1 is “Yes” – Please give full details of the affiliations with any registered political party or any third party recognised under the Political Parties, Elections and Referendums Act 2000 and confirm whether your organisation, or (any of) the director(s) / partner(s) / proprietor(s) have any active involvement in their activities :</p>	

9. BUSINESS CAPABILITY

<p>9.1 To which professional or trade bodies your organisation belongs and confirm whether you have any active involvement in their activities:</p>
<p>9.2 Please provide your registration number under the Data Protection Act 1998? Please explain if you are not registered.</p>
<p>9.3 Locations from which your organisation provides services similar to those required by the Commission and address(es) of office(s) from which this contract would be serviced</p>
<p>9.4 Provide a brief statement of your organisation's Health and Safety at Work policy (max. 600 words):</p>
<p>9.5 Provide a brief statement of your organisation's Environmental policy and how it minimises the impact it has upon the environment (max. 600 words):</p>
<p>9.6 Provide a brief statement of your organisation's equality and diversity policy and how it complies with the Equality Act 2010 (max. 600 words):</p>

10. DECLARATION OF STAFF SCREENING

10.1 Please confirm that a suitable background check will be carried out on the employee(s) who you propose to fulfil the service and you are in agreement with the declaration below. **[YES/NO]**

We confirm that we will carry out a procedure to ensure that any member of our staff employed by us in the delivery of this Contract will be sufficiently screened / vetted and that as a result we can assure and indemnify the Electoral Commission that we will verify the following for each staff member:

- identity (name, date of birth, address and national insurance number);
- employment history (for the past three years);
- nationality and immigration status (permission and/or entitlement to work in the UK); and
- criminal record (unspent convictions only).

11. COMMENTS

11.1 Any general comments you wish to make:

12. DECLARATION:

I declare that to the best of my knowledge that the responses submitted in this business questionnaire are correct. I understand that the information will be used in the evaluation process to assess my organisation's suitability to provide services in line with the Electoral Commission's requirements.

FORM COMPLETED BY

12.1	Name:	
12.2	Position (Job Title):	
12.3	Date:	
12.4	Telephone number:	
12.5	E-mail address	
12.6	Signature:	

Tender for an outsourced switchboard service for the Electoral Commission

Contract Reference C0082-PT-FCS

The Electoral Commission is seeking a supplier to provide an outsourced switchboard service answering calls to the organisation's main number and transferring these to the correct member of Commission staff.

The supplier will provide a service for up to 150 of the Commission's staff who are based in offices in London, Cardiff, Edinburgh and Belfast. The service will be provided as a minimum between 8.30 am and 5.30 pm Monday to Friday excluding public holidays. We receive on average about 900 calls per month via the current switchboard service but this varies depending on time of year and can reach a maximum of about 2000 calls in a busy month.

We wish to have a service in place in good time prior to the elections taking place in May 2016 so the successful supplier will need to demonstrate that they can implement a reliable service within a short timeframe.

The Commission's evaluation of the responses will focus on a number of areas, particularly value for money.

Interested suppliers can download the invitation to tender documents below and submit completed forms and tenders via post no later than **17:00 hours on 27th January 2016**.

Invitation to tender documents to download:

- [Instructions to tenderers accompanying letter – Read me first](#)
- [Scope of work](#)
- [Suitability questionnaire](#)
- [Suitability questionnaire evaluation matrix](#)
- [Suitability questionnaire guidance](#)
- [Tenderer's response](#)
- [Conditions of contract for services](#)

Contact to request further information:

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