



Crown
Commercial
Service

CABINET OFFICE

- and -

IDOX Software Ltd

ANNEXES

relating to

ELECTORAL MANAGEMENT SYSTEM (EMS)

UPGRADE

CCSO19A64

CONTENTS

| | |
|--|-----------|
| ANNEX 1 – TERMS AND CONDITIONS | 3 |
| 1 | 3 |
| 2 | 5 |
| 3 | 5 |
| 4 | 5 |
| 5 | 5 |
| 6 | 6 |
| 7 | 7 |
| 8 | 8 |
| 9 | 8 |
| 10 | 8 |
| 11 | 9 |
| 12 | 10 |
| 13 | 11 |
| 14 | 11 |
| 15 | 12 |
| 16 | 12 |
| 17 | 13 |
| 18 | 14 |
| 19 | 14 |
| 20 | 14 |
| 21 | 15 |
| 22 | 15 |
| ANNEX 2 – PRICE SCHEDULE | 16 |
| ANNEX 3 – STATEMENT OF REQUIREMENTS | 17 |
| ANNEX 4 – SUPPLIER’S RESPONSE | 18 |
| ANNEX 5 – CLARIFICATIONS | 19 |
| ANNEX 6 – ADDITIONAL TERMS & CONDITIONS | 20 |
| ANNEX 7 – CHANGE CONTROL FORMS | 21 |



ANNEX 1 – TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In these terms and conditions:

- “Agreement” means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter;
- “Award Letter” means the letter (including the Annexes thereto) from the Customer to the Supplier via the e-Sourcing Suite at the point of award;
- “Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (a) Government Department;
 - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
 - (c) Non-Ministerial Department; or
 - (d) Executive Agency;
- “Charges” means the charges for the Services as specified in the Award Letter;
- “Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Customer” means the Contracting Authority/Customer named in the Award Letter;
- “DPA” means the Data Protection Act 2018;
- “Expiry Date” means the date for expiry of the Agreement as set out in the Award Letter;
- “FOIA” means the Freedom of Information Act 2000;
- “Information” has the meaning given under section 84 of the FOIA;
- “Key Personnel” means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
- “Party” means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;



| | |
|----------------------------|---|
| “Personal Data” | means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement; |
| “Purchase Order Number” | means the Customer’s unique number relating to the supply of the Services; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the Customer under the Agreement; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter; |
| “Start Date” | means the commencement date of the Agreement as set out in the Award Letter; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Supplier” | means the person named as Supplier in the Award Letter; |
| “Term” | means the period from the Start Date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 BASIS OF AGREEMENT

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer, within 7 days of the date of the award letter, of a copy of the Award Letter countersigned by the Supplier.

3 SUPPLY OF SERVICES

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
 - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall conform with all descriptions, requirements, service levels and specifications set out in the Specification;
 - 3.2.5 comply with all applicable laws; and
 - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4 TERM

- 4.1 The Agreement shall take effect on the Start Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to 1 year from 1st July 2020 – 30th June 2021 by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and



expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. Any dispute of an invoice under this clause 5.4 will be dealt with in accordance with clause 19 (*Dispute Resolution*).
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
 - 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement;
and
 - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
 - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6 PREMISES AND EQUIPMENT

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and

OFFICIAL



vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.

- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7 STAFF AND KEY PERSONNEL

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

- 7.2 The Supplier shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the

OFFICIAL

Customer's premises in connection with the Agreement; and

7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, acting reasonably, except by reason of long-term sickness, parental leave and termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). 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.

8 ASSIGNMENT AND SUB-CONTRACTING

8.1 The Supplier shall not without the written consent of the Customer, consent not to be unreasonably withheld, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer or the respective owner of such intellectual property rights but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

9.3 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

10 GOVERNANCE AND RECORDS

10.1 The Supplier shall:

OFFICIAL

Agreement Annexes - Services

- 10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

11 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

- 11.1 Subject to clause 11.2, each Party shall:
- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 11.2.2 to its auditors or for the purposes of regulatory requirements;
- 11.2.3 on a confidential basis, to its professional advisers;
- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 11.2.6 where the receiving Party is the Customer:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
or
- (d) in accordance with clause 12 and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the customer under this clause 11.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 FREEDOM OF INFORMATION

12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information;
and



12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under Data Protection Legislation and both Parties shall duly observe all their obligations under Data Protection Legislation which arise in connection with the Agreement.

13.2 REPLACED BY ANNEX 6 IN RELATION TO PROTECTION OF PERSONAL DATA

13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

14 LIABILITY

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or

OFFICIAL

(f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

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

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clause and 18.3 shall be unlimited.

15 FORCE MAJEURE

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16 TERMINATION

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice. The Customer will pay the Charges due to the Supplier for work completed up to the point of Termination.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the

- Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17 COMPLIANCE

- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Supplier shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.



17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.

17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

18 PREVENTION OF FRAUD AND CORRUPTION

18.1 The Supplier shall not offer, give, or agree to give anything, to any person 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 Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:

18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

19 DISPUTE RESOLUTION

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20 GENERAL

20.1 Each of the Parties represents and warrants to the other that it has full capacity and Customer, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

OFFICIAL



- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any Customer to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21 NOTICES

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22 GOVERNING LAW AND JURISDICTION

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

ANNEX 2 – PRICE SCHEDULE

MANDATORY PRICING

REDACTED

See Annex 6 for further details.

RATE CARD

| Role | Level of Seniority | Daily Rate |
|--|--------------------|------------|
| Single blended rate | All | REDACTED |
| Single blended rate (for contingency draw-down only) | All | REDACTED |

See Annex 6 for further details regarding utilisation of the rate card when drawing down from the contingency fund.

Stage Payments:

REDACTED

ANNEX 3 – STATEMENT OF REQUIREMENTS

1. SCOPE OF REQUIREMENT

1.1 The following provisions are within the scope of this requirement:

- 1.1.1 The design, build and test of modifications to the EMS required to run the annual canvass process to meet the requirements in the draft legislation “The Representation of the People (Annual Canvass) (Amendment) Regulations 2019.”.
- 1.1.2 The policy requirements are set out in the draft legislation “The Representation of the People (Annual Canvass) (Amendment) Regulations 2019.”.
- 1.1.3 The policy is detailed as system functional and non-functional requirements in the embedded documents in Section 6.
- 1.1.4 To User Acceptance Test (UAT) the modifications with your customers.
- 1.1.5 To roll out the modified EMS to all your customers.
- 1.1.6 To train and support the users on the modified EMS, such that they can carry out their annual canvass process successfully. Note that training is required but we intend to agree those detailed requirements outside the bid clarification process. Training material to be prepared between January 2020 to March 2020 and training to be delivered between May 2020 and June 2020
- 1.1.7 All requirements are to be completed before 1st June 2020.

1.2 The following is outside the scope of this requirement:

- 1.2.1 There is no requirement to undertake any matching for residents of Northern Ireland.
- 1.2.2 Development of local data matching which is completed in a previous phase.

2. THE REQUIREMENT

2.1 Development, testing, UAT, roll out and training of EMS modifications for Canvass Reform by June 2020.

2.2 The Contract Start Date will be 1st November 2019 and the expiry date shall be– 30th June 2020. The Authority reserves the right to extend the contract for 1 year from 1st July 2020 – 30th June 2021.

2.3 The requirements are set out in the documents below:

| Title | Version | Description | Filename |
|--|---------|---|--|
| Canvass Reform 2020 EMS System Specification | 1.01 | Contains the detailed functional requirements for EMS suppliers including data matching step, routes 1-3, email and telephony handling. | Canvass Reform 2020 EMS System Specification |
| Management Information | 1.0 | Contains the detailed MI requirements | CR2020 CO Reporting |

| Specification | | | Specification v1.0.docx |
|---|-----|--|---|
| Management Information Specification (Electoral Commission) | 1.0 | Contains the detailed MI requirements for the Electoral Commission | CR2020 EMS EC Reporting Specification v1.0.docx |
| Testing Requirements | 1.0 | Contains the detailed testing requirements | test_requirements v1.0.docx |

2.4 Outputs which will be required are as follows:

2.4.1 Design Specification document detailing how the EMS will support the requirements set out in the documents above.

2.4.1.1 Note that in the Canvass Reform 2020 EMS System Specification, there are [Additional discretionary elements # (n)] shown in [blue text](#). Each of these should be quoted for individually and their inclusion in the final package will be determined through the commercial process.

2.4.1.2 There are also references to functionality that may or may not exist within the existing EMS system. The Authority would like to understand if functionality exists already and where it does not for the requirements to be explicitly quoted for.

Their inclusion in the final packaged will be determined through the commercial process.

For example:

- (a) Section 5.3.4 “14 / 15-year-old (Scotland only - but potential Wales soon too) Attainers”
- (b) Section 5.3.5 “Special Category Electors”
- (c) Section 5.5.2 “Local Data Matching”
- (d) Section 5.7 “New local data sets”
- (e) Section 5.9.1 “One piece of type 2 removal evidence”
- (f) Section 5.9.4 “Bulk Route Switching”. Specifically, anything that is not a MUST.
- (g) Section 8.2 “the ability to identify properties that have route 3 characteristics”
- (h) Section 9.8 “How will emails be sent” Specifically any integration effort and costs with a new email system.

(i) Section 10.4 “Telephone canvasser roles and responsibilities”

- 2.4.2 Detailed breakdown of costs; giving details of each development task and the effort and roles required to complete it.
- 2.4.3 Detailed project plan covering development, test, UAT, training and roll out.
- 2.4.4 High level test plan detailing how the test requirements contained in ‘test_requirements v1.0’ will be met.
- 2.4.5 Risk log associated with this piece of work.
- 2.4.6 Details of how the Authority team and ERO client base will be involved in the development process to verify that the functionality developed matches the requirements supplied.
- 2.4.7 Details of how the ERO client base will be involved in the approval of the completed deliverables.

3. KEY MILESTONES AND DELIVERABLES

3.1 Legislation to allow testing with live data is planned to be in place by the end of 2019.

3.2 The following Contract milestones/deliverables shall apply:

| Milestone/Deliverable | Description | Timeframe or Delivery Date |
|--------------------------------|--|--|
| 1. National data matching | Functionality to be operationally ready (this is part of 2019 data test specification in phase1) | No later than 1 st December 2019 |
| 2. Development complete | Development, test and delivery of functionality as per specifications. Evidence of successful testing | No later than 1 st May 2020 |
| 3. UAT complete | External testing completed by a set of Electoral Administrators | No later than 31 st May 2020 |
| 4. MI testing complete | Evidence that Management Information is collected, calculated and presented as per each MI specification | By 1 st June 2020 for MI to identify data matching results No later than 30 th June 2020 for the rest |
| 5. Completion of year1 go live | A review EMS year 1 product Evidence that product can be used as BAU canvassing activity | June - December 2020 |
| 6. Show and tells | Initial show and tell in Feb 2020 A second as functionality is finalised before milestone 2 | Initial Between Jan / Feb 2020 Second in April 2020 |

4. MANAGEMENT INFORMATION/REPORTING

4.1 MI requirements are included in the embedded MI specifications above

5. VOLUMES

5.1 Not applicable

6. CONTINUOUS IMPROVEMENT

6.1 The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.

6.2 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

7. SUSTAINABILITY

7.1 Not applicable

8. QUALITY

8.1 The Service and Support requirements must be provided directly by the Vendor and not by a Re-Seller of the service solution

9. STAFF AND CUSTOMER SERVICE

9.1 The Supplier shall provide a sufficient level of resource throughout the duration of the Contract in order to consistently deliver a quality service.

9.2 The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard.

9.3 The Supplier shall ensure that staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.

9.4 The Supplier shall have experience of the Authority's working culture and practices.

9.5 Knowledge of IERDS and its interfaces between Local Authorities.

10. SERVICE LEVELS AND PERFORMANCE

10.1 The Authority will measure the quality of the Supplier's delivery by:

| KPI/SLA | Service Area | KPI/SLA description | Target |
|---------|---------------------|--|---|
| 1 | Delivery Timescales | Testing of upload and download of data between Local Authorities and DWP | No later than 31 st May 2020 |
| 2 | Delivery | Show and tell 1 | January to February 2020 |
| 3 | Delivery | Show and tell 2 | April 2020 |

10.2 The Authority agrees to work with the successful supplier to resolve service failure issues. However, it will remain the successful supplier's sole responsibility to resolve any such service failures

11. SECURITY AND CONFIDENTIALITY REQUIREMENTS

11.1 Data files contain sensitive information about electors. The Service must offer suitable and effective security controls and processes to prevent unauthorised access to this information both in transit and at rest.

11.2 The service must offer an appropriate level of monitoring, logging and audit capability.

12. PAYMENT AND INVOICING

12.1 The Authority's preference for Invoicing and payment is on completion of agreed milestones. The Supplier shall propose these as part of the bid pack and The Authority shall seek to agree this during bid clarification .

12.2 Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.

12.3 Before payment can be considered, each invoice must include a detailed breakdown of work completed and the associated costs.

12.4 Invoices should be submitted either by post or electronically to:

12.5 CABINET OFFICE
REDACTED

13. CONTRACT MANAGEMENT

13.1 Attendance at Contract Review meetings shall be at the Supplier's own expense.

14. LOCATION

14.1 The Service will be registered to:

Electoral Registration Digital Service

REDACTED

Annex A Canvass Reform 2020 EMS System Specification v1.01

Annex B CR2020 EMS EC Reporting Specification v1.0

Annex C CR2020 CO Reporting Specification v1.0

Annex D Test Requirements v1.0

ANNEX 4 – SUPPLIERS RESPONSE

REDACTED

ANNEX 5 – CLARIFICATIONS

| | | | |
|---|---|---|-----------|
| 1 | <p>Functionality that may already exist (6.1.3.2)</p> <p>Can you confirm the section on the specification 6.3.1.2 relates to the 6.1.3.2 i.e its just a typo and these are the same section? Assuming so I read the question to mean that this provision are the costs related to add/modify or delete existing functionality to bring this up to the specification required by the overall requirements. Is this correct or do you mean something else please?</p> | <p>Within Attachment 4 tab 'mandatory requirements costs' at line items B 24:29, this should read 'Functionality that may already exist (6.3.1.2). Please find enclosed updated Attachment 4 v2.0 enclosed.</p> <p>Additionally, 6.3.1.2 refers to where functionality exists in the EMS system already and can be continued alongside Canvass Reform functionality.</p> <p>These have been provided for clarity and fullness within the specification but may not be applicable to all suppliers depending on the functionality you currently provide your customers.</p> <p>For example, if a system currently allows service voters to be input on to the HEF, they should continue to be able to do so under Canvass Reform but the specification is not requesting the supplier to add this functionality.</p> | 30.9.2019 |
| 2 | <p>We note in the response guidance to questionnaire 4 - technical approach that it states we are to use Arial font size 11. However, in the question detail it states 'Please ensure your response is no longer than 30 pages of A4 (double sided) at Arial font 20'.</p> | <p>Responses should be in Arial 11.</p> <p>Responses should be no more than 30 pages for 4.1 and 30 pages for 4.2</p> | |

| | | | |
|---|---|--|--|
| | <p>1. Can you please confirm if we are to use Arial font 11 or 20?</p> <p>2. Can you also please confirm that the response is to be no more than 30 pages each for questions 4.1 and 4.2 (60 pages in total)? Or is it 60 pages each 'A4 double sided' (120 pages in total)?</p> | | |
| 3 | <p>Attachment 3 - 5.1.6 states '...Note that training is required but we intend to agree those detailed requirements outside the bid clarification process. Training material to be prepared between January 2020 to March 2020 and training to be delivered between May 2020 and June 2020'.</p> <p>Can you please confirm that we are 'not' to include in our proposal - details or costs for Training & Support?</p> | <p>Please be advised that training is requirement; however should not be costed for in your proposal presently.</p> | |
| 4 | <p>In the terms and conditions there was 'unlimited liability' for branches of 3rd party IP and provisions regarding Bribery. We note that other liabilities are limited to 125% of the charges. Can we request that 'all' liabilities are capped to 125% of the charges and are not unlimited, as we cannot insure for unlimited liabilities.</p> | <p>Unlimited liability is only referred to in clause 14.1. Clause 9.4 has already been removed. Clause 18.3 refers to the supplier conducting fraud in relation to this agreement and therefore shall remain unlimited. Therefore clause 14.4 shall be changed to 'The Supplier's liability under the indemnity in clause 18.3 shall be unlimited.'</p> <p>At clause 14.3 it notes that nothing in the agreement shall be construed to limit or exclude either parties liability for death, personal injury, fraud or any other matter by law. This clause shall also remain unchanged.</p> <p>Attachment 5- Terms and conditions v3.0 attached.</p> | |
| 5 | <p>Attachment 3: - Some of the filenames given in section 6.2</p> | <p>Please find enclosed updated Attachment 3</p> | |

| | | | |
|---|---|---|--|
| | <p>don't seem to match those in the bid pack - e.g. "CR2020 CO Reporting Specification v1.0.docx" vs. "Annex C CR2020 CO Reporting Specification v1.0(cbupdates)". Could you please confirm the final names and version numbers of the documents listed in 6.2, so we can make sure that we have the final versions?</p> | <p>v3.0 with section 6.2 filenames updated.</p> <p>i.e.:</p> <p>Annex A Canvass Reform 2020 EMS System Specification v1.01.docx</p> <p>Annex B CR2020 EMS EC Reporting Specification v1.0.docx</p> <p>Annex C CR2020 CO Reporting Specification v1.0.docx (also enclosed).</p> <p>Annex D Test Requirements v1.0.docx</p> | |
| 6 | <p>"Attachments may be submitted in Microsoft Word, Excel. format" – as well as a textual response, are we able to submit an MS Project Plan in PDF format, or as an embedded PDF within the Word response document?</p> | <p>Please provide in PDF which should be readable and understandable.</p> | |
| 7 | <p>Our legal review has noted that the Customer may terminate the Agreement at any time without any penalty by giving termination notice which shall take effect 1 month after service of notice or, if the term of Agreement is less than 3 months, then such notice of termination can be given 10 days prior.</p> <p>Given the nature of this contract - as suppliers will have invested time and resources we believe it is reasonable to request an amendment (e.g. a sub-paragraph) to clause 16.1, to allow Suppliers to claim reasonable compensation for costs, if the contract is terminated early - example below:</p> | <p>The Authority will not be changing this clause.</p> | |

| | | | |
|---|---|---|--|
| | <p>“In the event of termination of this Agreement by the Customer under clause 16.1, then the Supplier shall be entitled, without prejudice to the parties’ other rights and remedies, to reasonable compensation for the costs of providing the Services up to the date of effective termination. Termination under the above provisions shall be without prejudice to and will not affect or limit any rights, remedies, liabilities or obligations accrued prior to the date of termination”</p> | | |
| 8 | <p>The Welsh Government is starting a process to discuss the introduction of changes that includes the lowering of voting age. This is a significant change which needs to be made for your requirement to make sense. Should we be assuming this has already taken place or is the intention that some of this work should be completed as part of this tender?</p> | <p>The franchise changes being taken forward by the Welsh and Scottish Government are separate to this contract and should not be included in our specification or the EMS quotes for our work.</p> <p>Neither Governments are ready to spec out their franchise changes.</p> | |

ANNEX 6 – ADDITIONAL TERMS & CONDITIONS

1. Contingency Fund
 - a. REDACTED
2. Effect on Mandatory Pricing should the one (1) year extension be enacted:
 - a. Pricing will be held firm from 1st Nov 2019 to 30th June 2020. Thereafter prices may be varied in line with the Retail Price Index All Items. The variation applied will be the percentage change for the most recent 12 month period, from which the Customer requests the variation, published by the Office for National Statistics. This will be capped from 5%. The variation will apply to outstanding activities detailed in the Mandatory pricing table outlined in Annex 2 of Attachment 5 – Terms and Conditions.
 - b. The total Contract value has been calculated as follows:
 1. Total potential contract to deliver canvass reform by June 2020 (including contingency fund): REDACTED
 2. Total potential increase in cost in the event of delay to Canvass Reform up until June 2021: REDACTED
 3. Total potential contract value should canvass reform be delayed until June 2021: REDACTED
3. Data Protection
 - a. The Customer and Supplier will be separate data controllers, and therefore data processor clauses are not a requirement under this contract. Both the Customer and the Supplier will fully comply with all requirements of data protection legislation.
 - b. In the event that the Supplier is asked to act as a data processor, this Contract will be amended to include the appropriate processor-controller clauses.
4. Customer's response to Suppliers proposal at Annex 4.
 - a. The Supplier's Proposal at Annex 4 sets out current expectation of deliverables and the contract value stated at Annex 2 is the maximum amount payable. The Parties agree to a fortnightly call to discuss progress against the deliverables outlined in Annex 3. Any change to the Suppliers Proposal at Annex 4 will be processed as part of the contract change control procedures at Annex 7.

**Annex 1 –Processing Personal Data
 Authorised Processing Template**

| Description Of Authorised Processing | Details |
|---|-----------------------|
| Identity of the Controller and Processor | Not Applicable |
| Subject matter of the processing | Not Applicable |
| Duration of the processing | Not Applicable |
| Nature and purposes of the processing | Not Applicable |
| Type of Personal Data | Not Applicable |
| Categories of Data Subject | Not Applicable |
| How long will the data be required for | Not Applicable |

ANNEX 7 – CHANGE CONTROL FORMS

| CHANGE CONTROL NOTICE (CCN) | | | |
|---|---|------------------------------------|--|
| Contract Title: | Contract for the Provision of Insert title of requirement (The Contract) | | |
| Contract Reference: | | Contract Change Number: | |
| Date CCN issued: | | Date Change Effective from: | |
| <p>Between: The Insert Name of Contracting Authority (The Customer) and Insert name of Supplier (The Supplier)</p> <p>1. The Contract is varied as follows:</p> <p style="margin-left: 20px;">1.1. Insert details of changes to the original contract.</p> <p>2. Words and expressions in this Change Control Notice shall have the meanings given to them in the Contract.</p> <p>3. The Contract, including any previous Contract changes, authorised in writing by both Parties, shall remain effective and unaltered except as amended by this Change Control Notice.</p> | | | |
| | | | <p>Change authorised to proceed by: _____ (Customer's representative):</p> <p style="text-align: right;">Signature</p> <p>Print Name and Job Title</p> |
| Authorised for and on behalf of the Supplier: | | | |
| Signature | Print Name and Job Title | Date | |
| Authorised for and on behalf of the Customer: | | | |
| Signature | Print Name and Job Title | Date | |