**Order Form and Terms & Conditions**

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| --- | --- | --- |
| 1. **Contract Reference** | **FRC2021-083 Insurance Brokerage Services** | |
| 1. **Date** | / /2021 [**insert**] | |
| 1. **Buyer** | Financial Reporting Council  8th Floor  125 London Wall  London  EC2Y 5AS  Company number 2486368 | |
| 1. **Supplier** | *Suppliers name*  *registered address (if registered)*  *and registration number (if registered)]* | |
| 1. **The Contract** | The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the attached contract conditions ("**Conditions**") and any Annex(es).  Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.  In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.  Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract. | |
| 1. **Deliverables** | **Goods** | None |
| **Services** | To be performed in accordance with the FRC’s Requirements as outlined in the FRC’s Invitation to Tender (ITT) dated [**Insert *date***]]. |
| 1. **Specification** | The specification of the Deliverables is as set out below in Annex 2 / the Supplier’s tender dated [**Insert *date***]]. | |
| 1. **Term** | The Term shall commence on  ??/??/2021  and the Expiry Date shall be ??/??/202?  unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.  The contract will initially be for a period of 1 year with possibility of three renewals each for a further period of 12 months. The Buyer may extend the Contract for 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 Contract shall apply throughout any such extended period. | |
| 1. **Charges** | The Charges for the Deliverables shall be as set out below in Annex 3 and reflect the Charges as per the Supplier’s tender dated [**Insert *date***]]. | |
| 1. **Payment** | All invoices must be sent to:  [accounts@frc.org.uk](file://\\frcfile01\Strategy%20&%20Business%20Support\Finance%20and%20Business%20Support\Procurement\05%20Procurement%20Activities\FRC2021-083%20Insurance%20Broker%20Services\02%20Procurement\01%20Tender%20Documents\AppData\Local\Microsoft\Windows\INetCache\r.stephen\AppData\Local\Microsoft\Windows\INetCache\FRC2020%20-002%20Board%20Effectiveness%20review\02%20Procurement\01%20Tender%20Documents\Draft\accounts@frc.org.uk) providing all the relevant information including the person who ordered the Services (i.e. FRC’s Financial Controller) Referencing. FRC2021 -[ FRC2021-083 Insurance Brokerage Services]  Please be aware, FRC operates a new supplier set up process before payments can be made. | |
| 1. **Buyer Authorised Representative(s)** | For general liaison your contact will continue to be  TBA  or, in their absence,  TBA | |
| 1. **Address for notices** | |  |  | | --- | --- | | **Buyer:** | **Supplier:** | | Financial Reporting Council  8th Floor, 125 London Wall, London, EC2Y 5A  Attention: Head of Procurement  Email: [procurement@frc.org.uk](mailto:procurement@frc.org.uk) | [**insert name and address of Supplier]**  Attention: **[insert title**]  Email: [**insert email address**] | | |
| 1. **Key Personnel** | |  |  | | --- | --- | | **Buyer:** | **Supplier:** | | TBA [***insert***]  Attention: TBA  Email: [TBA](mailto:F.Carter@frc.org.uk) | [**insert name and address of Supplier]**  Attention: **[insert title**]  Email: [**insert email address**] | | |
| 1. **Procedures and Policies** | For the purposes of the Contract the Supplier must have in place and adhered to policies / procedures or good practice relating to information security, business financial management and business continuity.  The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check.  The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables. | |
| 1. **Special Condition(s)** | * The Supplier represents and warrant that a conflict-of-interest check has been carried out and that check revealed no conflicts of interest. * Continuous Improvement - The Supplier shall have an ongoing obligation throughout the contract Term to identify new or potential improvements to the provision of the Services with a view to reducing the Buyer’s costs and/or improving the quality and efficiency of the Services and their supply to the Buyer. * For the avoidance of doubt, the Buyer will **not** pay Expenses unless agreed in advance and aligned to the FRC’s Travel & Expenses Policy (unless specified and included / agreed under Annex 3/3a). * TBA | |

|  |  |
| --- | --- |
| Signed for and on behalf of the **Supplier** | Signed for and on behalf of the **Buyer** |
| Name:  [**Insert** name]  [**Insert** job title] | Name:  [**Insert** name]  [**Insert** job title] |
| Date: | Date: |
| Signature: | Signature: |

**Annex 1 – Authorised Processing Template**

|  |  |
| --- | --- |
| Contract | FRC2021-083 Insurance Broker Services |
| Date | / /2021 [insert] |
| Description | Details |
| Identity of Controller for each Category of Personal Data | FRC is the xxx and the Supplier is the xxx of the following Personal Data: |
| Duration of the Processing | For example,  Throughout the duration of the Agreement.  Up to xx years after the expiry or termination of the Agreement |
| Nature and purposes of the Processing | For example  To facilitate the fulfilment of the Supplier’s obligations arising under this Agreement specifically     * TBA * TBA   Furthermore including   * Ensuring effective communication between the Supplier and FRC * Maintaining full and accurate records in accordance with any Record Keeping and Reporting provisions under the Agreement. |
| Type of Personal Data | For example, including but not limited to Name, Email, Telephone, Membership, Race, Sex, Religion, Education, Images, data monitoring usage, biometrics political opinion. |
| Categories of Data Subject | For example, including but not limited to FRC’s (contact persons/representatives); Customers; Staff; Directors; Current staff; Potential staff; Contractor / Consultant; Temporary agency worker |
| Plan for return and destruction of the data once the Processing is complete | For examples, Data will be retained for the delivery of the contract. It will then be securely destroyed according to ISO27001 compliant practices. |
| Supplier Due Diligence questionnaire | [***insert***] |

**FRC Data Processing Terms to apply**

**FRC Data Processing Terms to apply**

**[Annex 2 – Specification]**

[***insert***]

**[Annex 3 – Proposal & Charges]**

[***insert***]

# Definitions used in the Contract

1. In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **"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:   1. Government Department; 2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); 3. Non-Ministerial Department; or 4. Executive Agency; |
| **"Charges"** | means the charges for the Deliverables as specified in the Order Form; |
| **"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; |
| **"Contract"** | means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier’s counter signing the Order Form and includes the Order Form and Annexes; |
| **"Controller"** | has the meaning given to it in the GDPR; |
| **"Buyer"**  **"Date of Delivery"** | means the person identified in the letterhead of the Order Form;  means that date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form; |
| **"Buyer Cause"** | any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier; |
| **"Data Protection Legislation"** | (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; |
| **"Data Protection Impact Assessment"** | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| **"Data Protection Officer"** | has the meaning given to it in the GDPR; |
| **"Data Subject"** | has the meaning given to it in the GDPR; |
| **"Data Loss Event"** | any event that results, or may result, in unauthorised access to FRC Data and/or Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of FRC Data and/or Personal Data in breach of this Contract, including any Personal Data Breach; |
| **"Data Subject Access**  **Request"** | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| **"Deliver"** | means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with Clause [ ]. Delivered and Delivery shall be construed accordingly; |
| **"Deliverables"** | means the Deliverables as described in the Order Form, including, where relevant, any data provided by the Supplier to the Buyer; |
| **"Existing IPR"** | any and all Intellectual Property Rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise); |
| **"Expiry Date"** | means the date for expiry of the Contract as set out in the Order Form; |
| **"FOIA"** | means the Freedom of Information Act 2000 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 Event"** | any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds; |
| **"GDPR"** | the General Data Protection Regulation (Regulation (EU) 2016/679); |
| **"Goods"** | means the goods to be supplied by the Supplier to the Buyer under the Contract; |
| **"Good Industry Practice"** | standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; |
| **"FRC Data"** | a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential and or Regulatory information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller; |
| **"Information"** | has the meaning given under section 84 of the FOIA; |
| **"Information Commissioner"** | the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies; |
| **"Insolvency Event"** | in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction; |
| **"Intellectual Property Rights"** | all intellectual property rights, including patents, supplementary protection certificates, petty patents, utility models, trade marks, database rights, rights in designs, copyrights (including rights in computer software) and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, in each case for their full term, and together with any renewals or extensions; |
| **"Key Personnel"** | means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing; |
| **"LED"** | Law Enforcement Directive (Directive (EU) 2016/680); |
| **"New IPR"** | all Intellectual Property Rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract (including, for the avoidance of doubt, all Intellectual Property Rights in the Deliverables) but shall not include the Supplier's Existing IPR; |
| **"Order Form"** | means the letter from the Buyer to the Supplier printed above these terms and conditions; |
| **"Party"** | the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them; |
| **"Personal Data"** | has the meaning given to it in the GDPR; |
| **"Personal Data Breach"** | has the meaning given to it in the GDPR; |
| **"Processor"** | has the meaning given to it in the GDPR; |
| **"Purchase Order Number"** | means the Buyer’s unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract; |
| **"Regulations"** | the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time; |
| **"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 Buyer under the Contract; |
| **"Specification"** | means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form; |
| **"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 Contract; |
| **"Staff Vetting Procedures"** | means vetting procedures that accord with good industry practice or, where applicable, the Buyer’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| **Storage Media** | means the part of any device that is capable of storing and retrieving data; |
| **"Subprocessor"** | any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract; |
| **"Supplier Staff"** | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under a Contract; |
| **"Supplier"** | means the person named as Supplier in the Order Form; |
| **"Term"** | means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause [  ] or terminated in accordance with the terms and conditions of the Contract; |
| **"US-EU Privacy Shield Register"** | a list of companies maintained by the United States of America Department for Commence that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: https://www.privacyshield.gov/list; |
| **"VAT"** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **"Workers"** | any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; |
| **"Working Day"** | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

# Understanding the Contract

In the Contract, unless the context otherwise requires:

## references to numbered clauses are references to the relevant clause in these terms and conditions;

## 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;

## the headings in this Contract are for information only and do not affect the interpretation of the Contract;

## references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;

## the singular includes the plural and vice versa;

## a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and

## the word ‘including’, "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

# How the Contract works

## The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.

## The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.

## The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

# What needs to be delivered

## **All Deliverables**

### The Supplier must provide Deliverables: (i) in accordance with the Specification, Order Form and these Terms and Conditions; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don’t conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.

### The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

## **Services clauses**

### Late delivery of the Services will be a default of the Contract.

### The Supplier must co‑operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.

### The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services

### The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.

### The Supplier must allocate sufficient resources and appropriate expertise to the Contract.

### The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

### On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.

### The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality (and free from defects).

### The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

# Pricing and payments

## In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.

## All Charges:

### exclude VAT, which is payable on provision of a valid VAT invoice;

### include all costs connected with the supply of Deliverables.

## The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.

## A Supplier invoice is only valid if it:

### includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;

### includes a detailed breakdown of Deliverables which have been delivered (if any)

## If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.

## The Buyer may retain or set‑off payment of any amount owed to it by the Supplier if notice and reasons are provided.

## The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non‑payment.

# The Buyer's obligations to the Supplier

## If Supplier fails to comply with the Contract as a result of a Buyer Cause:

### the Buyer cannot terminate the Contract under clause 11;

### the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;

### the Supplier is entitled to additional time needed to deliver the Deliverables;

### the Supplier cannot suspend the ongoing supply of Deliverables.

## Clause 6.1 only applies if the Supplier:

### gives notice to the Buyer within 10 Working Days of becoming aware;

### demonstrates that the failure only happened because of the Buyer Cause;

### mitigated the impact of the Buyer Cause.

# Record keeping and reporting

## The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.

## The Supplier must provide the Buyer with a named representative which has authority to act for the Supplier in providing ongoing customer service and support to the Buyer.

## The Supplier will undertake to respond to any request from the Buyer in relation to the supply of the Deliverables under this contract within 3 working days.

## The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.

## The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.

## The Supplier must provide information to the auditor and reasonable co‑operation at their request.

## If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

### tell the Buyer and give reasons;

### propose corrective action;

### provide a deadline for completing the corrective action.

## If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier, such that it may impact on the continued performance of the Contract then the Buyer may:

### require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand

### if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

# Supplier staff

## The Supplier Staff involved in the performance of the Contract must:

### be appropriately trained and qualified;

### be vetted using Good Industry Practice;

### comply with all conduct requirements when on the Buyer's premises.

## Where a Buyer decides one of the Supplier's Staff isn’t suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

## If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.

## The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.

## The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:

### requested to do so by the Buyer (not to be unreasonably withheld or delayed);

### the person concerned resigns, retires or dies or is on maternity or long‑term sick leave; or

### the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

# Rights and protection

## The Supplier warrants and represents that:

### it has full capacity and authority to enter into and to perform the Contract;

### it owns or has the necessary rights in the Existing IPRs for the purposes of performing its obligations under the Contract;

### the receipt, use and onward supply of the Deliverables or the Supplier's Existing IPRs by the Buyer and its sub-licensees shall not infringe the rights (including any Intellectual Property Rights) of any third party;

### the Contract is executed by its authorised representative;

### it is a legally valid and existing organisation incorporated in the place it was formed;

### there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;

### it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;

### it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and

### it is not impacted by an Insolvency Event.

## The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

## The Supplier indemnifies the Buyer against each of the following:

### wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;

### non‑payment by the Supplier of any tax or National Insurance.

## If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

## All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

# Intellectual Property Rights

## Each Party (or its licensors) shall retain all right, title and interest in and to the Existing IPRs.

## 

## **Assignment**

### Any New IPR created under the Contract shall vest in the Buyer. The Supplier now assigns to the Buyer with full title guarantee and free from all encumbrances (or shall procure the assignment to the Buyer will full title guarantee and free from all encumbrances of) all New IPR together with the right to sue for and recover damages or other relief in respect of the infringement of any such New IPR. In relation to future copyright, the assignment under this clause 10.2 shall take effect as a present assignment of future copyright.

### At the Buyer's request, the Supplier shall execute (or procure the execution of) any document and/or do anything else necessary to give full effect to the assignment under clause 10.2(a).

### The Supplier shall procure that those Supplier Staff who are entitled to moral rights under the Copyright Designs and Patents Act 1988 (or equivalent or analogous rights under the laws of other jurisdictions), which exist or may arise in relation to any works in respect of which Intellectual Property Rights are assigned under this Clause shall unconditionally and irrevocably waive all such rights in favour of the Buyer.

## **Licence granted to the Supplier**

### The Buyer grants to the Supplier a worldwide, fully paid-up, non-exclusive, non-transferable, non-sublicensable licence for the duration of the Term to copy and modify the Deliverables only to the extent necessary and for the sole purpose of fulfilling its obligations under the Contract. This licence will take effect from the date of assignment of Intellectual Property Rights in the relevant Deliverable to the Buyer under clause 10.2(a).

### The Buyer grants to the Supplier a worldwide, fully paid-up, non-exclusive, non-transferable, non-sublicensable licence for the duration of the Term to use the Buyer's Existing IPRs solely for the purpose of fulfilling its obligations under the Contract.

## **Licence granted to the Buyer**

### The Supplier grants to the Buyer a non-exclusive, perpetual, fully paid-up, irrevocable, transferable, fully-paid up, worldwide licence in respect of any Supplier's Existing IPR that is an integral part of a Deliverable, to:

#### use, copy and modify the Supplier's Existing IPR;

#### publish, distribute and make available the Supplier's Existing IPR as an integral part of the relevant Deliverable; and

#### sub-license third parties to do any of the foregoing,

#### in connection with the Buyer's and its sub-licensees' receipt, use and dealings with the Deliverables and the New IPR. In relation to future copyright, such licence shall take effect as a present licence of future rights.

## Where a Party acquires ownership of Intellectual Property Rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

## Neither Party has the right to use the other Party's Intellectual Property Rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.

## The Supplier shall indemnify, keep indemnified and hold harmless the Buyer from and against all losses, damages, costs or expenses (including professional fees and fines) suffered or incurred by the Buyer as a result of a claim that the provision of the Services, or the receipt of them by the Buyer or the Buyer's use, reproduction or exploitation in the manner permitted or contemplated by the Contract of any Deliverable or part of a Deliverable or any other materials or resource provided or made available by the Supplier (or by any third party on behalf of the Supplier) in performing the Services infringes the Intellectual Property Rights or rights in respect of confidential information of any other person (an "**IPR Claim**").

## If an IPR Claim is made or anticipated, the Supplier must at its own expense and the Buyer's sole option, either:

### obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party Intellectual Property Rights;

### replace or modify the relevant item with substitutes that do not infringe any third party Intellectual Property Rights without adversely affecting the functionality or performance of the Deliverables.

# Ending the contract

## The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

## The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

## **Ending the Contract without a reason**

### The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than [***delete as required*** ]30 days' written notice (including e-mail) and if it's terminated clause 11.5(b) to 11.5(g) applies.

## **When the Buyer can end the Contract**

### If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing (including e-mail) to the Supplier:

#### there's a Supplier Insolvency Event;

#### if the Supplier repeatedly breaches the Contract in a way 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 Contract;

#### if the Supplier 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;

#### there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre‑approved by the Buyer in writing;

#### if the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;

#### the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;

#### the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.

### If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(b) to 11.5(g) applies.

## **What happens if the Contract ends**

1. Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:

### the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;

### the Buyer's payment obligations under the terminated Contract stop immediately;

### accumulated rights of the Parties are not affected;

### the Supplier must promptly delete or return the Government Data except where required to retain copies by law;

### the Supplier must promptly return any of the Buyer's property provided under the Contract;

### the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re‑procurement;

### the following clauses survive the termination of the Contract: [3.2.4.2 , 6, 7.2, 8.5 9, 10, 11, 13.2, 14, 15, 16, 17, 18, 30, 34, 35] and any clauses which are expressly or by implication intended to continue.

## **When the Supplier can end the Contract**

### The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

### If a Supplier terminates the Contract under clause 11.6(a):

#### the Buyer must promptly pay all outstanding charges incurred to the Supplier;

#### the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;

#### clauses 11.5(d) to 11.5(g) apply.

## **Partially ending and suspending the Contract**

### Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.

### The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.

### The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.7, but the Supplier may not either:

#### reject the variation;

#### increase the Charges, except where the right to partial termination is under clause 11.3.

### The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

# How much you can be held responsible for

## Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 150% of the Charges paid or payable to the Supplier (subject to clause 12.2, 12.3 and 12.4).

## No Party is liable to the other for:

### any indirect losses;

### loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

## In spite of clause 12.1, neither Party limits or excludes any of the following:

### its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;

### its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;

### any liability that cannot be excluded or limited by law.

## In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.7, 13.2, 14.26(e) or 30.2(b).

## Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.

## If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

# Obeying the law

## The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:

### comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at

### (<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf>) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;

### support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;

### not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;

### meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

## The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.

## The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32

## "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

# Data protection

### **As per Annex 1 – DP Terms**

# What you must keep confidential

## Each Party must:

### keep all Confidential Information it receives confidential and secure;

### not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;

### immediately notify the disclosing Party if it suspects unauthorised access, loss, theft, copying, use or disclosure of the Confidential Information.

## In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

### where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

### if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;

### if the information was given to it by a third party without obligation of confidentiality;

### if the information was in the public domain at the time of the disclosure;

### if the information was independently developed without access to the disclosing Party's Confidential Information;

### to its auditors or for the purposes of regulatory requirements;

### on a confidential basis, to its professional advisers on a need-to-know basis;

### to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

## The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

## The Buyer may disclose Confidential Information in any of the following cases:

### on a confidential basis to the employees, agents, consultants and contractors of the Buyer

### on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;

### if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its regulatory and public functions;

### where requested by Parliament;

### under clauses 5.7 and 16.

## For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.

## Information which is exempt from disclosure by clause 16 is not Confidential Information.

## The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

## The Supplier will indemnify the Buyer against any and all Losses incurred if the Supplier breaches clause 15.

# When you can share information

## The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

## Within the required timescales the Supplier must give the Buyer full co‑operation and information needed so the Buyer can:

### comply with any Freedom of Information Act (FOIA) request;

### comply with any Data Protection Act (DPA) request;

### comply with any Environmental Information Regulations (EIR) request.

## The Buyer may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer’s decision, which does not need to be reasonable.

# Invalid parts of the contract

1. If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it’s valid or enforceable.

# No other terms apply

1. The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

# Other people's rights in a contract

1. No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

# Circumstances beyond your control

## Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

### provides written notice to the other Party;

### uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

## Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

## Where a Party terminates under clause 20.2:

### each party must cover its own losses;

### clause 11.5(b) to 11.5(g) applies.

# Relationships created by the contract

1. The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

# Giving up contract rights

1. A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

# Transferring responsibilities

## The Supplier cannot assign the Contract without the Buyer's written consent.

## The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

## When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

## The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.

## The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

## If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

### their name;

### the scope of their appointment;

### the duration of their appointment.

# Changing the contract

## Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.

# How to communicate about the contract

## All notices under the Contract must be in writing (including e-mail) and are considered effective on the Working Day of delivery as long as they’re delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

## Notices to the Buyer or Supplier must be sent to their address in the Order Form, unless otherwise agreed in writing by either Party

## This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

# Preventing fraud, bribery and corruption

## The Supplier shall not:

### commit any criminal offence referred to in the Regulations 57(1) and 57(2);

### offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) 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 public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.

## The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

## If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:

### terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or

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

# Equality, diversity and human rights

## The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:

### protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;

### any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

## The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

# Health and safety

## The Supplier must perform its obligations meeting the requirements of:

### all applicable law regarding health and safety;

### the Buyer's current health and safety policy while at the Buyer’s premises, as provided to the Supplier.

## The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they’re aware of at the Buyer premises that relate to the performance of the Contract.

# Environment

## When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

## The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

# Tax

## The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

## Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Off Contract, the Supplier must both:

### comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;

### indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

## If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

### the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

### the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;

### the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn’t good enough to demonstrate how it complies with clause 30.2 or confirms that the Worker is not complying with those requirements;

### the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

# Conflict of interest

## The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.

## The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.

## The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

# Reporting a breach of the contract

## As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 13.1, or clauses 26 to 31.

## The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 32.1.

# Resolving disputes

## If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.

## If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 33.3 to 33.5.

## Unless the Buyer refers the dispute to arbitration using clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

### determine the dispute;

### grant interim remedies;

### grant any other provisional or protective relief.

## The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

## The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 33.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 33.4.

## The Supplier cannot suspend the performance of the Contract during any dispute.

# Which law applies

1. This Contract and any issues arising out of, or connected to it, are governed by English law.