



Government Procurement Service

LLM 2 SERVICES AGREEMENT

SPECIAL TERMS

ESTATES PROFESSIONAL SERVICES

REFERENCE NUMBER: RM 6168

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THIS DEED is made on

2022 **BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** (“the **Buyer**”), acting pursuant to the Estates Professional Service Framework Agreement (RM6168) dated 21 July 2021 between the Minister of the Cabinet Office acting through Government Procurement Services (the “**CCS**”) together (“the **Buyer**”);
- and
- (2) **[COMPANY NAME]** (company number []) whose registered office is at [] (“the **Supplier**”), each a “**Party**” and together the “**Parties**”.

BACKGROUND TO THIS CONTRACT:

- (A) The Buyer wishes to appoint the Supplier pursuant to the Estates Management Service Framework RM6168 for the provision of Estate Management Services.
- (B) Following the valid completion and execution of the Order Form, this Contract is deemed to be a Call-Off Contract under the Framework Contract.
- (C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

OPERATIVE TERMS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The Parties shall interpret this Contract using Joint Schedule 1 (*Definitions and Interpretation*).

2. PARTY DETAILS

- 2.1 The Order Form sets out both the Supplier and Buyer’s details in relation to this Contract including but not limited to their address, authorised representatives, invoice address, Key Staff, Key Subcontractors, payment details and contact escalation personnel when disputes arise.

3. HOW THE CONTRACT WORKS

- 3.1 Following the valid completion and execution of the Order Form, this Contract shall be legally binding from the Effective Date until it ends in accordance with Clause 21 (Termination) or otherwise operation of Law.
- 3.2 The Core Terms are amended as set out in this Contract (“the **Special Terms**”).
- 3.3 The Joint Schedules and the Call-Off Schedules are amended as set out in the Schedules attached to these **Special Terms**.
- 3.4 The Parties acknowledge that each Call-Off Contract:

- 3.4.1 is a separate Contract from the Framework Contract;
 - 3.4.2 is between a Supplier and Buyer;
 - 3.4.3 includes the Core Terms as amended by these Special Terms, Schedules and any other changes or items in the completed Order Form; and
 - 3.4.4 survives the termination of the Framework Contract.
- 3.5 This Contract is formed by the Special Terms, the Joint Schedules and the Call-Off Schedules and the Supplier must comply with all of its obligations set out in the Special Terms, the Joint Schedules and the Call-Off Schedules, provided always that in the event of any conflict between these documents or any other document referred to in the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 3.5.1 the Order Form;
 - 3.5.2 these Special Terms;
 - 3.5.3 Call-Off Schedule 20 (*Call-Off Specification*);
 - 3.5.4 Subject to Clause 3.5.7, the Schedules to the Special Terms;
 - 3.5.5 the Framework Agreement;
 - 3.5.6 any other document referred to in the Contract; and
 - 3.5.7 the Call-Off *Tender*.
- 3.6 The Buyer does not guarantee the Supplier any exclusivity, quantity or value of work under this Call-Off Contract.
- 3.7 The Parties acknowledge that, if allowed by the Regulations, if the Buyer decides to buy Deliverables under the Framework Contract it must use Framework Schedule 7 (Call-Off Award Procedure) and must state its requirements using Framework Schedule 6 (Order Form Template and Call-Off Schedules). If allowed by the Regulations, the Buyer can:
 - 3.7.1 make changes to Framework Schedule 6 (Order Form Template and Call-Off Schedules);
 - 3.7.2 create new Call-Off Schedules;
 - 3.7.3 exclude optional template Call-Off Schedules; and
 - 3.7.4 use Special Terms in the Order Form to add or change terms.
- 3.8 Where the Supplier is approached by an eligible buyer any Other Contracting Authority requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this Framework Contract before accepting their

order.

3.9 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract.

3.10 When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

3.11 The Buyer will not be liable for errors, omissions or misrepresentation of any information.

3.12 Due Diligence

3.12.1.1 The Supplier shall undertake due diligence in relation to the Due Diligence Information.

3.12.1.2 As part of its due diligence, the Supplier shall:

- (a) make its own enquiries to satisfy itself as to the accuracy, completeness and adequacy of the Due Diligence Information;
- (b) satisfy itself (whether by inspection or having raised all relevant due diligence questions with the Buyer) of all relevant details relating to the Due Diligence Information; and
- (c) provide to the Buyer any reasonable information requested by the Buyer in relation to the Supplier's enquiries and analysis regarding the Due Diligence Information.

3.12.1.3 Notwithstanding any other provision of this Contract, the Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of:

- (a) any misinterpretation of the Due Diligence Information and/or this Contract; and/or
- (b) any failure by the Supplier to satisfy itself as to the accuracy, completeness and/or adequacy of the Due Diligence Information,

and there shall be no entitlement to a Variation and there shall be no effect on the Charges in relation to such grounds.

3.12.2 Either Party shall notify the other and the Buyer's Authorised Representative as soon as it becomes aware of any material inaccuracy, ambiguity, discrepancy, omission, mistake or inconsistency (each known as an "**Inaccuracy**") in the Due Diligence Information.

3.12.3 All costs associated with the due diligence exercise shall be borne by the Supplier.

4. WHAT NEEDS TO BE DELIVERED

4.1 ALL DELIVERABLES

- 4.1.1 The Supplier must supply the Deliverables to the Buyer in accordance with the provisions of the Contract.
- 4.1.2 The Supplier, using the standard of care required by the Contract, to carry out all activities, operations and functions expressly stated in or reasonably to be inferred as required by the Contract and the Pricing Framework in order to:
 - 4.1.2.1 meet the objectives of;
 - 4.1.2.2 achieve the outputs described in; and
 - 4.1.2.3 provide all Deliverables described in or which may be reasonably inferred as being the responsibility of the Supplier.
- 4.1.3 The Supplier must:
 - 4.1.3.1 comply with all reasonable instructions given to the Supplier and its Supplier Staff by the Buyer in relation to the Deliverables from time to time, including reasonable instructions to reschedule or alter the Deliverables;
 - 4.1.3.2 immediately report to the Buyer's Authorised Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 4.1.7.1;
 - 4.1.3.3 co-operate with the Buyer, the Buyer Supply Chain Member and the Buyer's other professional advisers in relation to the Deliverables as required by the Buyer;
 - 4.1.3.4 comply with the Buyer's internal policies and procedures, Standards and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) (the "**Buyer Policies**") in each case as notified to the Supplier in writing by the Buyer;
 - 4.1.3.5 ensure that at all times the Buyer meets all payment and other obligations in respect of the Deliverables, the Estate and Property Documentation;
 - 4.1.3.6 perform its obligations under this Contract, including in relation to the supply of the Deliverables in accordance with:
 - (a) Call-Off Schedule 20 (*Call-Off Specification*), the Framework Tender Response and in relation to a Call-Off Contract, the Call-Off Tender;

- (b) all applicable Law;
- (c) using reasonable skill & care;
- (d) Good Industry Practice;
- (e) to a professional standard;
- (f) the Values and Behaviours as set out in Joint Schedule 5 (*Corporate Social Responsibility & Buyer Policies*);
- (g) the dates agreed between the Parties;
- (h) the Security Policy; and
- (i) the Buyer's Policies

4.1.3.7 comply with:

- (a) the Implementation Plan and testing set out in Call-Off Schedule 13 (*Implementation Plan and Testing*);
- (b) the Service Levels and Key Performance Indicators stipulated in Call-Off Schedule 14 (*Service Levels*); and
- (c) their own established policies, processes, procedures and practices including but not limited to internal quality control measures as long as they do not conflict with the Contract,

in each case to the extent the same do not conflict with the requirements as set out in Clauses 4.1 to 4.1.2 and the Implementation Plan; and

4.1.3.8 deliver the Deliverables using efficient business process and ways of working having regard to the Buyer's obligation to ensure value for money; and

4.1.3.9 in the event that the Supplier becomes aware of any inconsistency between the requirements of this Clause 4, immediately notify the Buyer's Authorised Representative in writing of such inconsistency and the Buyer's Authorised Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with. The Supplier shall comply with such instructions at no cost to the Buyer.

4.1.4 Implementation

4.1.4.1 The Parties shall comply with the provision of Call Off

Schedule 13 (*Implementation Plan and Testing*) in relation to the Implementation Plan.

- 4.1.4.2 The Implementation Plan sets out the Supplier's strategy and timescales for providing the Implementation Services, the Milestones against which the Supplier's progress is measured and against which Milestone Payments will be made.
- 4.1.5 The Supplier shall ensure that each Milestone is achieved on or before its Milestone Date.
- 4.1.6 The Supplier must provide Deliverables with a warranty of at least ninety (90) days from Delivery against all obvious defects (if applicable).
- 4.1.7 The Supplier shall not:
 - 4.1.7.1 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Buyer exists in relation to the Deliverables;
 - 4.1.7.2 incur any expenditure which would result in any estimated figure for any element of the Deliverables being exceeded without the Buyer's prior written agreement;
 - 4.1.7.3 without the prior written consent of the Buyer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Deliverables;
 - 4.1.7.4 pledge the credit of the Buyer in any way;
 - 4.1.7.5 engage in any conduct which in the reasonable opinion of the Buyer is prejudicial to the Buyer.
- 4.1.8 The Supplier must work with the Buyer Supply Chain Members to deliver the Deliverables required.
- 4.1.9 The Supplier may be expected to deliver specific requirements in association with other named suppliers.
- 4.1.10 The Supplier may be expected to deliver specific requirements in association with the Buyer's in house teams. This may include a requirement for the Supplier's Key Staff to be based at the Buyer Premises for an agreed period of time.
- 4.1.11 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.

4.1.12 The Supplier accepts that the Buyer shall have the right after consultation with the Supplier to require the removal from involvement in the Deliverables of any person engaged in the performance of the Deliverables if in the Buyer's reasonable opinion, the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Deliverables.

4.1.13 Time in relation to:

4.1.13.1 compliance with the Implementation Plan; and

4.1.13.2 the Delivery of those Deliverables that relate to the payment by the Buyer to any third party and/or (excluding the Supplier); and/or the service of any formal notice on behalf of the Buyer to any third party

shall be of the essence and failure of the Supplier to comply with this Clause 4.1.13 shall be a material Default. The Supplier indemnifies the Buyer against all claims brought by any person caused by the Supplier's failure to comply with this Clause 4.1.13.

4.1.14 Human Resources

4.1.14.1 The Supplier shall provide all personnel required to deliver the Services at all times and shall warrant all Supplier Staff are suitably competent and experienced to deliver the Services. At all times the Buyer has the right to determine suitability and have the right to instruct the Supplier to remove any Supplier Staff in accordance with the Contract.

4.1.14.2 The Supplier shall ensure, prior to commencing any work for the Buyer, all personnel are subject to as a minimum HMG Baseline Personnel Security Standard security clearance. For certain affected properties to be advised by the Buyer, further levels of personnel assessment may be required. This will typically require individuals to hold Security Check (SC) clearance in line with the latest HMG personnel security controls (<https://www.gov.uk/government/publications/hmg-personnel-security-controls>). There may be certain roles that require interaction with vulnerable groups, access higher levels of sensitive information, or due to the systems access capability, (for example database administrators, etc.), may be required to be subject to higher levels of personnel security vetting. The Buyer shall advise on these roles during the Implementation Period. All security clearance documents shall be made available at all times to the Buyer.

4.1.14.3 The Supplier shall deploy personnel and other resources

flexibly in order to ensure the Buyer benefits from the scope and scale of the Supplier's organisation.

- 4.1.14.4 Full details of the contractual obligations required to comply with the above procedures can be found in the Guidance document "HMG Baseline Personnel Security Standard - A Guide for DWP Contractors". A PDF version can be viewed at:

<http://www.dwp.gov.uk/docs/aguidefordwpcontractors.pdf>

- 4.1.15 The Supplier shall comply with the provisions of Paragraph 10 of the Call-Off Specification in so far as they relate to Performance Management as set out in Joint Schedule 14 (*Service Levels*) and the Annex A to Part A - Performance Management Scheme in relation to the monitoring and reporting on its performance against the Performance Indicators.

4.2 GOODS

- 4.2.1 If and to the extent necessary:

- 4.2.1.1 all Goods delivered must be new, or as new if recycled, unused and of recent origin;
- 4.2.1.2 all manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free;
- 4.2.1.3 the Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier;
- 4.2.1.4 risk in the Goods transfers to the Buyer on Delivery of the Goods but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery;
- 4.2.1.5 the Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership;
- 4.2.1.6 the Supplier must deliver the Goods on the date and to the specified location during the Buyer's Working Day.
- 4.2.1.7 the Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 4.2.1.8 all deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 4.2.1.9 the Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 4.2.1.10 the Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or

anticipated action about the Recall of the Goods.

- 4.2.2 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than fourteen (14) days' notice, then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- 4.2.3 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they do not conform with Clause 4.2. If the Supplier does not do this, it will pay the Buyer's costs including repair or re-supply by a third party.

4.3 SERVICES

- 4.3.1 Without prejudice to Clause 4.1.13, late Delivery of the Services will be a Default of a Call-Off Contract.
- 4.3.2 The Supplier must co-operate with the Buyer, Buyer Supply Chain Members and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
- 4.3.3 The Supplier must, at its own risk and expense, provide all Supplier Equipment required to Deliver the Services.
- 4.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
- 4.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 4.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 4.3.7 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.

5. KEY PERSONNEL

- 5.1 The Supplier acknowledges that the Key Staff are essential to the proper provision of the Deliverables to the Buyer. The Key Staff shall be responsible for performing the Key Roles as are ascribed to them in the Order Form and such other roles as may be necessary or desirable for the purposes of the Contract or as may be agreed between the Parties from time to time.
- 5.2 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.

- 5.3 The Key Staff shall not and ensure that no Subcontractor shall not remove or replace such Key Staff during the Contract, unless:
- 5.3.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed); and/or
 - 5.3.2 the person concerned resigns, retires or dies or by reason of long-term sickness, maternity leave, paternity leave, termination of employment/partnership or other extenuating circumstances; and/or
 - 5.3.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 5.4 Any replacements to the Key Staff shall be subject to the agreement of the Buyer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Staff being replaced and be suitable for the responsibilities of that person in relation to the Contract.
- 5.5 The Buyer shall not unreasonably withhold its agreement under Clauses 5.3 or 5.4. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Staff.
- 5.6 The Supplier shall:
- 5.6.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 5.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 5.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
 - 5.6.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
 - 5.6.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 5.7 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any

respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

- 5.8 If requested by the Buyer, the Supplier shall procure that Key Staff attend transaction review meetings at no cost to the Buyer during the term of the Contract and upon its conclusion.

6. SUPPLIER STAFF

- 6.1 Save as for provided in Call-Off Schedule 7 (*Key Supplier Staff*), the Supplier Staff involved in the performance of each Contract must:

- 6.1.1 be appropriately trained and qualified;
- 6.1.2 be vetted using Good Industry Practice and the Security Policy; and
- 6.1.3 comply with all conduct requirements when on Site.

- 6.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.

- 6.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 23.

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

- 6.5 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.

7. INDEPENDENCE

- 7.1 The Supplier shall carry out (and shall procure that Supplier's Staff shall carry out) the Deliverables in the Buyer's best interests and independently and impartially as between the:

- 7.1.1 Supplier (and any Supplier Staff or any Supplier Related Party); and
- 7.1.2 Buyer's Supply Chain,

such that the Buyer receives the same degree of impartiality and independence of judgment from the Supplier and any Supplier Staff in matters pertaining to the Estate as the Buyer would were it performing the same role as the Supplier.

- 7.2 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Supplier Staff or any Supplier Related Party is placed in a position of potential or actual conflict between the financial, commercial or other interests of the Supplier and/or any Supplier Related Party and the Supplier's duties to the Buyer under this Contract. Should any conflict arise or become apparent, the Supplier will disclose the same to the Buyer immediately with full details.

- 7.3 Without prejudice to the Supplier's general obligation under Clauses 7.1 to 7.2, the Supplier shall not and shall procure that any Supplier Staff or any Supplier Related Party shall not engage in Proscribed Conduct and notwithstanding Clause 4.1.14 shall notify the Buyer immediately on any breach of this requirement.
- 7.4 Without prejudice to the Buyer's rights under Clause 21 (Termination) where the Supplier is in breach of Clause 7.1 to 7.3 and such breach shall be a material Default, the Supplier shall within 5 (five) Working Days of any breach becoming apparent to it, provide proposals to the Buyer for remedying and/or mitigating such breach. Upon any breach of Clauses 7.1 to 7.3 becoming apparent to the Buyer (whether or not notified by the Supplier), the Buyer may at the Supplier's cost:
- 7.4.1 in accordance with Joint Schedule 10 (*Remedies in the event of inadequate performance*) remove any or all of the Deliverables from the scope of this Contract and carry out such Deliverables itself and/or employ a third party to carry out such Deliverables; and/or
 - 7.4.2 require the Supplier to put such measures in place (including but not limited to information barriers) as required by the Buyer in its absolute discretion to rectify and/or mitigate the effect of any breach of Clause 7.1 and/or 7.3; and/or
 - 7.4.3 undertake additional monitoring activities pursuant to Joint Schedule 10 (*Remedies in the event of inadequate performance*) to ensure that notwithstanding any breach of Clauses 7.1 to 7.3, the Supplier continues to comply with its other obligations pursuant to this Contract and in accordance with Clause 7.1.
- 7.5 Save in the event of removal of the relevant element of the Deliverables pursuant to Joint Schedule 10 (*Remedies in the event of inadequate performance*) or termination of all or part of the Deliverables, where as a result of the matter(s) leading or contributing to a breach of Clauses 7.1 to 7.3 the Supplier or any Supplier Staff or a Supplier Related Party realises a profit or other financial benefit:
- 7.5.1 the Supplier shall account to the Buyer in respect of the same on a monthly basis; and
 - 7.5.2 the Buyer shall be entitled to set-off an amount equivalent to that financial benefit (as accounted for by the Supplier or otherwise as the Buyer may determine) from any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.

8. SERVICE LEVELS

- 8.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Levels as set out in Annex A to Part A (Performance Management Scheme) under Call-Off Schedule 14 (*Service Levels*).

8.2 Services Improvement

8.2.1 In addition to meeting the requirements of Call-Off Schedule 14 (*Service Levels*) the Supplier shall have an on-going obligation throughout the Term to identify:

8.2.1.1 Savings pursuant to Call-Off Schedule 3 (*Continuous Improvement and Savings*); and

8.2.1.2 new or potential improvements to the Deliverables and the Buyer's Supply Chain in accordance with this Clause 8.

8.2.2 The Supplier shall ensure that the information that it provides to the Buyer shall be sufficient for the Buyer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Buyer requests.

8.2.3 If the Buyer wishes to incorporate any improvement identified by the Supplier, the Buyer shall send the Supplier a Variation request in accordance with Joint Schedule 2 (*Variation Form*).

9. PAYMENT AND CHARGES

9.1 The Supplier shall comply with the provisions of Call-Off Schedule 5 (Pricing Details).

10. SET-OFF AND WITHHOLDING

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

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

11. THE BUYER'S OBLIGATION TO THE SUPPLIER

11.1 If Supplier Non-Performance arises from a Buyer Cause:

11.1.1 the Buyer can not terminate a Contract under Clause 21.5;

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

11.1.3 the Supplier is entitled to additional time needed to make the Delivery; and

11.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.

11.2 Clause 11.1 only applies if the Supplier:

- 11.2.1 gives notice to the Party responsible for the Buyer Cause within ten (10) Working Days of becoming aware;
- 11.2.2 demonstrates that the Supplier Non-Performance would not have occurred but for the Buyer Cause; and
- 11.2.3 mitigated the impact of the Buyer Cause.

12. LIABILITY AND INSURANCE

12.1 Liability

- 12.1.1 Subject to the following provisions of this Clause 12.1, each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than the greater of:
 - (a) £5 million; or
 - (b) 150% of the Estimated Yearly Charges unless specified in the Call-Off Order Form.
- 12.1.2 Subject to Clause 12.1.3 and 12.1.4 no Party is liable to the other for:
 - 12.1.2.1 loss of profits (whether direct or indirect);
 - 12.1.2.2 turnover;
 - 12.1.2.3 savings;
 - 12.1.2.4 loss of business opportunities;
 - 12.1.2.5 loss of revenue;
 - 12.1.2.6 loss of or damage to goodwill (in each case whether direct or indirect);
 - 12.1.2.7 loss of savings (whether anticipated or otherwise); and/or
 - 12.1.2.8 any indirect, special or consequential loss or damage.
- 12.1.3 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense) which may be recoverable by the Buyer:
 - 12.1.3.1 the additional operational and/or administrative costs and expenses arising from any Default including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default;
 - 12.1.3.2 any wasted expenditure or charges;
 - 12.1.3.3 the cost of procuring, implementing and operating any

alternative or replacement services to the Deliverables which shall include any incremental costs associated with such replacement services above those which would have been payable under this Contract;

12.1.3.4 any costs, expenses, losses, compensation or interest paid to a third party by the Buyer; and

12.1.3.5 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

12.1.4 Nothing in this Contract shall operate to exclude or limit the liability of either Party in relation to the following:

12.1.4.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;

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

12.1.4.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

12.1.4.4 any liability to the extent it cannot be limited or excluded by Law;

12.1.4.5 its obligation to pay the required Management Charge or Default Management Charge; or

12.1.4.6 wilful default.

12.1.5 The limitation of liability set out in Clause 12.1.1 does not limit or exclude the liability of the Supplier for any indemnity given under Clauses 4.1.13, 6.5, 12.1.3.4, 14.5, 16.10, 20.6.2, 42.4 or Call Off Schedule 2 (*Staff Transfer*) of a Contract.

12.1.6 In spite of Clauses 12.1.1 but subject to Clauses 12.1.2 and 12.1.3, the Supplier's aggregate liability in each and any Contract Year under Clause 15.10 shall in no event exceed the Data Protection Liability Cap.

12.1.7 Each Party must use its reasonable endeavours to mitigate any Losses which it suffers under or in connection with this Contract, including where any such Losses are covered by an indemnity.

12.1.8 When calculating the Supplier's liability under Clause 12.1.1, the following items will not be taken into consideration:

12.1.8.1 Deductions; and

12.1.8.2 any items specified in Clause 12.1.5 or 12.1.6.

- 12.1.9 If more than one Supplier is party to a Contract, each Supplier Party is jointly and severally liable for their obligations under that Contract.
- 12.1.10 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Buyer to any document or information provided by the Supplier in its provision of the Deliverables, and no failure of the Buyer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional supplier of the Deliverables employed in a customer/supplier relationship.
- 12.1.11 Save as otherwise expressly provided, the obligations of the Buyer under the Contract are obligations of the Buyer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Buyer in any other capacity, nor shall the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Buyer to the Supplier.
- 12.1.12 For the avoidance of doubt, the Supplier's liability for any loss, damage, cost, or expense incurred by the Buyer under or in connection with this Contract as a result of any act or omission of the Supplier that is not capped in accordance with Clause 12.1.1 or in accordance with Clause 12.1.2 shall be unlimited.

12.2 INSURANCE

- 12.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Buyer arising from any advice given or omitted to be given by the Supplier under the Contract or otherwise in connection with the Deliverables. Such insurance shall be maintained for so long as the Supplier may have any liability to the Buyer.
- 12.2.2 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 12.2.1.
- 12.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 12.2.1, the Buyer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

- 12.2.4 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.
- 12.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 12.2.6 Where there are Goods supplied, in connection with the supply of Services under this Contract, the minimum insurance period shall be six (6) years following the expiration or earlier termination of this Contract.
- 12.2.7 The standard minimum levels of insurance cover have been set in the Framework Agreement.
- 12.2.8 Notwithstanding the above provisions, the Supplier shall comply with the additional provisions of Joint Schedule 3 (*Insurance Requirement*) in relation to the Supplier's insurance policies.

13. OBEYING THE LAW

- 13.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (*Corporate Social Responsibility & the Buyer Policies*).
- 13.2 To the extent that it arises as a result of a Default by the Supplier, the Supplier indemnifies the Buyer against any fine or penalty incurred by the Buyer pursuant to Law and any costs incurred by the Buyer in defending any proceedings which result in such fine or penalty.
- 13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and 23, 42, 47, 48, 49 and 50.

14. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 14.1 Each Party shall retain ownership of its Existing IPR.
- 14.2 All Intellectual Property Rights ("IPR") created in connection with the supply of the Deliverables under this Contract shall vest in the Supplier who gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:
 - 14.2.1 receive and use the Deliverables; and
 - 14.2.2 make use of the deliverables provided by a Replacement Supplier.

- 14.3 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 14.4 Where a Party acquires ownership of IPRs 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.
- 14.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 14.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- 14.6.1 obtain for Buyer the rights in Clause 14.1 to 14.3 without infringing any third party IPR; or
 - 14.6.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 14.7 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, names, logos or trademarks except as provided by Clause 14 or otherwise agreed in writing
- 14.8 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Buyer and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Supplier acknowledges that any authorisation by the Buyer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

15. PROTECTION OF INFORMATION

- 15.1 Each Party shall comply with the Data Protection Legislation and their respective obligations set out in Call-Off Schedule 11 (*Personal Data*).
- 15.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (*Processing Data*).
- 15.3 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 15.4 The Buyer owns all data relating to the Buyer that is stored on the Buyer's System(s).
- 15.5 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send to the Buyer copies every six (6) Months.

- 15.6 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and applicable Security Management Plan.
- 15.7 If at any time the Supplier suspects or has reason to believe that the Government Data provided or generated under this Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 15.8 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable, the Buyer may either or both:
 - 15.8.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
 - 15.8.2 restore the Government Data itself or using a third party.
- 15.9 The Supplier must pay each Party's reasonable costs of complying with Clause 15.8 unless the Buyer is at fault.
- 15.10 The Supplier:
 - 15.10.1 must provide the Buyer with all Government Data in an agreed open format within ten (10) Working Days of a written request;
 - 15.10.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - 15.10.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - 15.10.4 must securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and
 - 15.10.5 indemnifies the Buyer against any and all Losses suffered or incurred by the Buyer if the Supplier breaches this Clause 15 and/or any Data Protection Legislation.

16. CONFIDENTIALITY

- 16.1 Each Party must, subject to the following provisions of this Clause 16:
 - 16.1.1 keep all Confidential Information it receives confidential and secure;
 - 16.1.2 except as expressly set out in the Contract at Clauses 16.2 to 16.3 or elsewhere in the Contract 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 this Contract); and

- 16.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 16.2 Notwithstanding Clause 16.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
 - 16.2.1 where disclosure is required by applicable Law or by a court with the required jurisdiction, if the Recipient Party (to the extent that it is permitted to do so by such applicable Law or by such court) notifies the Disclosing Party in advance of disclosure of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 16.2.2 such information was in the possession of the Recipient Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 16.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 16.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract;
 - 16.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
 - 16.2.6 on a confidential basis, to its Auditors;
 - 16.2.7 on a confidential basis, to its professional advisers on a need-to-know basis;
 - 16.2.8 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.
- 16.3 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 this Contract. The Supplier must ensure that the Supplier Staff enter into a direct confidentiality agreement with the Buyer at the Buyer's request.
- 16.4 Transparency Information is not Confidential Information.
- 16.5 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Buyer's Confidential Information received otherwise than for the purposes of the Contract.
- 16.6 The Buyer may disclose Confidential Information in any of the following cases:
 - 16.6.1 on a confidential basis to the employees, agents, consultants and Suppliers of the Buyer;

- 16.6.2 on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Buyer transfers or proposes to transfer all or any part of its business to;
 - 16.6.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 16.6.4 where requested by Parliament;
 - 16.6.5 under Clause 18 and (if required) by Call-Off Schedule 5 (*Pricing Details*) and Framework Schedule 5 (*Management Charges and Information*);
 - 16.6.6 to any consultant, contractor or other person engaged by the Buyer for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
 - 16.6.7 for the purpose of the examination and certification of the Buyer's accounts;
 - 16.6.8 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
 - 16.6.9 the need for such disclosure arises out of or in connection with any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
 - 16.6.10 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the audit rights, its Step-In rights, its rights to appoint a Remedial Adviser and Exit Management rights; or
 - 16.6.11 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 16.7 For the purposes of Clauses 16.2, 16.3 and 16.6 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this Clause 16.
- 16.8 The Buyer shall use all reasonable endeavours to ensure that any government department, other Contracting Authority, employee, third party or Subcontractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 16.6 is made aware of the Buyer's obligations of confidentiality.
- 16.9 Nothing in this Clause 16 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course

of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

- 16.10 Save as already provided for under Clause 12.1 the Supplier shall, at all times during and after the performance of the Contract, indemnify the Buyer and keep the Buyer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Buyer arising from any breach of the Supplier's obligations under this Clause 16 except and to the extent that such liabilities have resulted directly from the Buyer's instructions.

17. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

- 17.1 The Supplier shall comply with and shall ensure that the Supplier's Staff comply with, the provisions of:

17.1.1 the Official Secrets Acts 1911 to 1989; and

17.1.2 section 182 of the Finance Act 1989.

18. FREEDOM OF INFORMATION

- 18.1 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the Environmental Information Regulations (EIR) and shall assist and cooperate with the Buyer to enable the Buyer to comply with its Information disclosure obligations.

- 18.2 The Supplier must tell the Buyer within forty-eight (48) hours if it receives a Request For Information.

- 18.3 Within five (5) Working Days of the Buyer's request the Supplier must give CCS and each Buyer full co-operation and information needed so the Buyer can:

18.3.1 publish the Transparency Information;

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

18.3.3 comply with any Environmental Information Regulations (EIR) request

- 18.4 The Buyer may talk to the Supplier to help it decide whether to publish information under Clause 18. However, the extent, content and format of the disclosure is the Buyer's decision, in its absolute discretion.

- 18.5 The Buyer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- 18.6 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Buyer.
- 18.7 The Supplier acknowledges that (notwithstanding the provisions of Clause 16) the Buyer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Deliverables:
- 18.7.1 in certain circumstances without consulting the Supplier; or
- 18.7.2 following consultation with the Supplier and having taken the Supplier's views into account,
- provided always that where Clause 18.1 applies the Buyer shall, in accordance with any recommendations of the Ministry of Justice Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 18.8 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Buyer on reasonable notice to inspect such records as requested from time to time.
- 18.9 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Buyer may be obliged to disclose it in accordance with Clause 19.

19. TRANSPARENCY

- 19.1 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 Contract is not Confidential Information. The Buyer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 19.2 Notwithstanding any other term of the Contract, the Supplier hereby gives consent to the Buyer to publish the Contract to the general public in its entirety (subject only to redaction of any Information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
- 19.3 The Buyer may consult with the Supplier to inform its decision regarding any redactions but the Buyer shall have the final decision in its absolute discretion.
- 19.4 The Supplier shall assist and cooperate with the Buyer to enable the Buyer to publish the Contract.

20. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 20.1 The Supplier warrants, represents and undertakes to the Buyer that:
- 20.1.1 it has full capacity and authority and all necessary consents licences,

- permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
- 20.1.2 the Contract is executed by a duly authorised representative of the Supplier;
 - 20.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
 - 20.1.4 in entering the Contract it has not committed any fraud;
 - 20.1.5 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
 - 20.1.6 all information, statements and representations contained in the Supplier's tender or other submission to the Buyer for the award of the Deliverables are and remain true, accurate and not misleading and it will advise the Buyer immediately of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 20.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
 - 20.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
 - 20.1.9 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
 - 20.1.10 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - 20.1.11 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned

- by or under the control of, or used by, the Buyer;
- 20.1.12 it is not impacted by an Insolvency Event; and
- 20.1.13 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Deliverables.
- 20.2 The warranties and representations in Clause 20.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 20.3 The Supplier warrants, represents and undertakes to the Buyer that:
- 20.3.1 it has read and fully understood the Order Form, Special Terms and Call-Off Terms and is capable of performing the Deliverables in all respects in accordance with the Contract;
- 20.3.2 the Supplier (and each of its Subcontractors) has all staff, equipment and experience necessary for the proper performance of the Deliverables; and
- 20.3.3 it will at all times:
- 20.3.3.1 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
- 20.3.3.2 in conformance with the relevant specifications set out in the Order Form and (if applicable) the manufacturer's specifications and documentation, the Framework Tender Response and in relation to a Call-Off Contract, the Call-Off Tender (if there is one);
- 20.3.3.3 comply with all the Service Levels as specified by the Buyer and meet or exceed the Service Levels;
- 20.3.3.4 carry out the Deliverables within the timeframe agreed with the Buyer;
- 20.3.3.5 without prejudice to its obligations under Call Off Schedule 7 (*Key Supplier Staff*) ensure to the satisfaction of the Buyer that the Deliverables are provided and carried out by such appropriately qualified, skilled and experienced Suppliers Staff as shall be necessary for the proper performance of the Deliverables;
- 20.3.3.6 where the Goods are supplied in connection with or ancillary to the Services, those Goods are and will continue to be, throughout the anticipated or stipulated lifetime of the same:

- (a) of satisfactory quality and fit for purpose;
- (b) free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period;
- (c) where such Goods are supplied, they shall be supplied with full title guarantee;
- (d) consistent with any requirements set out or referred to in the relevant Order Form and/or any Contract relating to quality and security and the Supplier shall ensure that all aspects of the said Goods are the subject of quality management systems and risk mitigation measures; and
- (e) serviceable (and, in this connection, that sufficient spare parts shall be readily available for the said anticipated or stipulated lifetime in conformance with the relevant specifications set out in the relevant Order Form and (if applicable) the manufacturer's specifications and documentation.

20.3.3.7 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Buyer in writing prior to the date of this Contract; and

20.3.3.8 it has notified the Buyer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

20.4 The Supplier shall immediately notify the Buyer in writing:

- 20.4.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier; and
- 20.4.2 if the Supplier undergoes a Change of Control;
- 20.4.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.

20.5 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Buyer would have in respect of breach of that provision by the Supplier if that provision

had not been so expressed.

20.6 The Supplier indemnifies both CCS and every Buyer against each of the following:

20.6.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and

20.6.2 non-payment by the Supplier of any Tax or National Insurance.

20.7 All claims indemnified under this contract must use Clause 37 (Dealing with Claims).

20.8 The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for breach of that clause by the Supplier.

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

20.10 The Supplier acknowledges and agrees that:

20.10.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Buyer into entering into the Contract; and

20.10.2 the Buyer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

21. TERMINATION

21.1 Contract Period

21.1.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

21.2 Extending this Contract

21.2.1 The Buyer can extend this Contract for the Call-Off Optional Extension Period by giving the Supplier no less than three (3) months' written notice prior to the Expiry Date.

21.3 Ending the contract without a reason

21.3.1 The Buyer has the right to terminate this Call-Off Contract at any time without reason by giving the Supplier not less than ninety (90) days' written notice.

21.4 Rectification plan process

21.4.1 If there is a Notifiable Default, the Buyer may, without limiting its other

rights, request that the Supplier provide a Rectification Plan in accordance with the provisions of Joint Schedule 10 (*Remedies in the event of inadequate performance*).

- 21.4.2 If the Buyer rejects any Rectification Plan, including any revised Rectification Plan, the Buyer does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 21.5.3.1.

21.5 When the Buyer can end a contract

- 21.5.1 If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

21.5.1.1 there is a Supplier Insolvency Event;

21.5.1.2 there is a Default that is not corrected in line with an accepted Rectification Plan;

21.5.1.3 the Supplier does not provide a Rectification Plan within ten (10) days of the request;

21.5.1.4 there is any material Default of the Contract;

21.5.1.5 there is any material Default of any Joint Controller Agreement relating to any Contract;

21.5.1.6 there is a Default of Clauses 16, 18, 20.1, 23 and 50 or Call-Off Schedule 9 (*Security*) (where applicable) relating to any Contract;

21.5.1.7 there is a consistent repeated failure to meet the Performance Indicators in Call-Off Schedule 14 (*Service Levels*);

21.5.1.8 if the level of performance of the Supplier is likely to cause or causes a Critical Performance Failure to occur;

21.5.1.9 there is a Change of Control of the Supplier which is not pre-approved by the Buyer in writing;

21.5.1.10 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;

21.5.1.11 in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms) by a court; or

21.5.1.12 the Supplier or its Affiliates embarrass or bring CCS or the

Buyer into disrepute or diminish the public trust in them.

21.5.2 The Parties acknowledge that CCS may terminate the Framework Contract if the Buyer terminates a Call-Off Contract for any of the reasons listed in Clause 21.5.1.

21.5.3 If any of the following non-fault based events happen, the Buyer has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:

21.5.3.1 the Buyer rejects a Rectification Plan;

21.5.3.2 there is a Variation which cannot be agreed using Clause 40 (Variation) or resolved using Clause 36.2 (Resolving disputes);

21.5.3.3 if there is a declaration of ineffectiveness in respect of any Variation; or

21.5.3.4 any of the events in 73 (1) (a) or (b) of the Regulations happen.

21.6 When the Supplier can end the contract

21.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate this Call-Off Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within thirty (30) days of the date of the Reminder Notice.

21.7 What happens if the Contract ends

21.7.1 Where a Party terminates a Contract under any of Clauses 21.3, 21.5.1, 21.5.2, 21.5.3, 21.6 or 33.2 or a Contract expires all of the following apply:

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

21.7.1.2 accumulated rights of the Parties are not affected;

21.7.1.3 the Supplier must promptly repay to the Buyer any and all Charges the Buyer has paid in advance in respect of Deliverables not provided by the Supplier as at the End Date;

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

21.7.1.5 the Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract; and

- 21.7.1.6 the Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- 21.7.2 In addition to the consequences of termination listed in Clause 21.7.1, where the Buyer terminates a Contract under Clause 21.5.1 the Supplier is also responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- 21.7.3 In addition to the consequences of termination listed in Clause 21.7.1, if either the Buyer terminates a Contract under Clause 21.3 or the Supplier terminates this Call-Off Contract under Clause 21.6:
- 21.7.3.1 the Buyer must promptly pay all outstanding Charges incurred to the Supplier; and
- 21.7.3.2 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.
- 21.7.4 In addition to the consequences of termination listed in Clause 21.7.1, where a Party terminates under Clause 33.2 each Party must cover its own Losses.
- 21.7.5 Each Party must use its reasonable endeavours to mitigate any Losses which it suffers under or in connection with this Contract, including where any such Losses are covered by an indemnity.
- 21.7.6 The following Clauses survive the termination or expiry of each Contract:
- 21.7.6.1 Clause 4.2.1.10;
- 21.7.6.2 Clause 9
- 21.7.6.3 Clause 39;
- 21.7.6.4 Clause 6.5;
- 21.7.6.5 Clause 14;
- 21.7.6.6 Clause 12.1;
- 21.7.6.7 Clause 13.2;
- 21.7.6.8 Clause 15;
- 21.7.6.9 Clause 16;

21.7.6.10 Clause 18.2 to 18.4;

21.7.6.11 Clause 28;

21.7.6.12 Clause 30;

21.7.6.13 Clause 42.4;

21.7.6.14 Clause 36.2;

21.7.6.15 Clause 36.1; and

21.7.6.16 any Clauses and Schedules which are expressly or by implication intended to continue.

21.8 Partially ending and suspending the Contract

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

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

21.8.3 The Parties must agree any necessary Variation required by Clause 21.8 using the Variation Procedure, but the Supplier may not either:

21.8.3.1 reject the Variation; or

21.8.3.2 increase the Charges, except where the right to partial termination is under Clause 21.3.

21.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 21.8.

21.9 When subcontracts can be ended

21.9.1 At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

21.9.1.1 there is a Change of Control of a Subcontractor which is not pre-approved by the Buyer in writing;

21.9.1.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 21.5; or

21.9.1.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer.

21.10 Save as otherwise expressly provided in the Contract termination or expiry of

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

22. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 22.1 The Supplier must not, and shall procure that its Subcontractors must not, make any press announcements or publicise the Contract or any part of it in any way without the prior written consent of the Buyer and must take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 22.
- 22.2 Any such press announcements or publicity proposed under this Clause 22 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 22.3 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Buyer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Buyer including any examination of the Contract by the auditors.
- 22.4 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Buyer or bring the Buyer into disrepute.

23. PREVENTION OF BRIBERY AND CORRUPTION

- 23.1 The Supplier must not during any Contract Period:
 - 23.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or
 - 23.1.2 do or allow anything which would cause CCS or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 23.2 The Supplier must during the Contract Period:
 - 23.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
 - 23.2.2 keep full records to show it has complied with its obligations under Clause 23 and give copies to CCS or the Buyer on request; and
 - 23.2.3 if required by the Buyer, within twenty (20) Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Buyer, that they have complied with Clause 23, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

- 23.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 23.1 or 23.2 or has any reason to think that it, or any of the Supplier Staff, has either:
- 23.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 23.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 23.3.3 received a request or demand for any undue financial or other advantage of any kind related to a Contract; or
 - 23.3.4 suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.
- 23.4 If the Supplier notifies the Buyer as required by Clause 23.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 23.5 In any notice the Supplier gives under Clause 23.4 it must specify the:
- 23.5.1 Prohibited Act;
 - 23.5.2 identity of the Party who it thinks has committed the Prohibited Act; and
 - 23.5.3 action it has decided to take.
- 23.6 The Supplier warrants, represents and undertakes that it has not:
- 23.6.1 paid commission or agreed to pay commission to the Buyer, any Contracting Body or any other public body or any person employed by or on behalf of the Buyer in connection with the Contract; and
 - 23.6.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Buyer or any other public body or any person employed by or on behalf of the Buyer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Buyer and the Buyer before execution of the Contract.
- 23.7 Without prejudice to its other rights and remedies under this Clause 23, the Buyer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Buyer in full from and against:
- 23.7.1 the amount of value of any such gift, consideration or commission; and
 - 23.7.2 any other loss sustained by the Buyer in consequence of any breach

of this Clause 23.

24. TRANSFER AND SUB-CONTRACTING

- 24.1 The Supplier cannot not assign, novate, or transfer, or in any other way dispose of, the Contract or any part of it without the Buyer's prior written consent.
- 24.2 The Buyer has consented to the engagement of any Subcontractors specifically identified in the Order Form.
- 24.3 The Supplier shall be responsible for all acts and omissions of the Supplier Staff (including for the avoidance of doubt those acts and omissions of those employed or engaged by its Subcontractors) as if they were its own.
- 24.4 The Buyer can assign, novate, transfer or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - 24.4.1 any Central Government Body; or
 - 24.4.2 public or private sector body which performs the functions of the Buyer.
- 24.5 When the Buyer uses its rights under Clause 24.4 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 24.6 The Supplier can terminate a Contract novated under Clause 24.4 to a private sector body that is experiencing an Insolvency Event.
- 24.7 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:
 - 24.7.1 their name;
 - 24.7.2 the scope of their appointment; and
 - 24.7.3 the duration of their appointment.
- 24.8 The Buyer may, if it so chooses, nominate the Subcontractors to be used for specific Deliverables or contract with them directly. The Buyer will consult fully with the Supplier before exercising this right.
- 24.9 The Buyer may, if it chooses, use its in-house resources, business units and other framework agreements to deliver specific services. The Buyer will consult fully with the Supplier before exercising this right.
- 24.10 Any change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not, subject to Clause 24.11, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Buyer.
- 24.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 24.4 to a body which is not a Central

Government Body or if there is a change in the legal status of the Buyer such that it ceases to be a Central Government Body (in the remainder of this Clause any such body being referred to as a "Transferee"):

24.11.1 the rights of termination of the Buyer in Clause 21 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

24.11.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

24.12 The Buyer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Buyer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

24.13 For the purposes of Clause 24.11 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

25. WAIVER

25.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

25.2 No waiver (partial or full) or such relaxation of the terms of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 35 (Notices).

25.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

26. CUMULATIVE REMEDIES

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

27. FURTHER ASSURANCES

27.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be

necessary to give effect to the meaning of the Contract.

28. SEVERABILITY

- 28.1 If any part of a 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 is valid or enforceable.
- 28.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Buyer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

29. SUPPLIER'S STATUS

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

30. ENTIRE AGREEMENT

- 30.1 The Contract, together with a completed, signed and dated Order Form and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.
- 30.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
- 30.3 The Supplier will not be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
 - 30.3.1 verify the accuracy of the Due Diligence Information; or
 - 30.3.2 properly perform its own adequate checks.

31. COUNTERPARTS

- 31.1 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.
- 31.2 Transmission of the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. Without prejudice to the validity of the agreement thus made, each party shall provide the others with the original

of such counterpart as soon as reasonably possible thereafter.

32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 32.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, unless stated in the Contract provided that this Clause 32 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

33. CIRCUMSTANCES BEYOND YOUR CONTROL

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

33.1.1 provides a Force Majeure Notice to the other Party; and

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

- 33.2 Either Party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

34. RELATIONSHIP CREATED BY CONTRACT

- 34.1 No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

35. NOTICES

- 35.1 Any notices sent under this Contract must be in writing.

- 35.2 Subject to Clause 35.4 (Notices) the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Electronic communication	9:00am on the first Working Day after sending	Dispatched as a pdf attachment to a secure message via <u>DWP e-Procurement Solution</u> without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm	Properly addressed and delivered as evidenced by

	on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	way of a signature / delivery receipt.
Prepaid, Royal Mail Signed For 1st Class or other prepaid, next Working Day service Providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by way of a signature / delivery receipt.

- 35.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Supplier	Buyer (for notices other than Termination Notice, legal proceedings or any documents in any legal action)	Buyer (for Termination Notice, legal proceedings or any documents in any legal action)
Contact	REDACTED	REDACTED	REDACTED
Address	REDACTED	REDACTED	REDACTED
Email	REDACTED	REDACTED	REDACTED

- 35.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 35.2 (Notices):

35.4.1 Step-In Notices;

35.4.2 Force Majeure Notices;

35.4.3 notices issued by the Supplier pursuant to Clause 35.3 (Termination by the Supplier);

35.4.4 Termination Notices; and

35.4.5 Dispute Notices.

35.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 35.4 (Notices) shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 35.2 (Notices)) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

35.6 This Clause 35 (Notices) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Clause 36 (Disputes and Law)).

36. DISPUTES AND LAW

36.1 Governing Law and Jurisdiction

36.1.1 The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

36.2 Resolving Disputes

36.2.1 Senior Representatives

36.2.1.1 If there is a Dispute, the senior representatives of each Party who have Buyer to settle the Dispute will, within twenty-eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute.

36.2.2 Mediation

36.2.2.1 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 36.2.3 to 36.2.5.

36.2.3 Tribunal

36.2.3.1 Unless the Buyer refers the Dispute to arbitration using Clause 36.2.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the Dispute; and/or
- (b) grant interim remedies, and/or
- (c) any other provisional or protective relief.

36.2.4 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.

36.2.5 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 36.2.3, 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 36.2.4.

36.2.6 The Supplier cannot suspend the performance of this Contract during any Dispute.

37. DEALING WITH CLAIMS

37.1 If a Beneficiary is notified of a Claim, then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.

37.2 At the Indemnifier's cost the Beneficiary must both:

37.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

37.2.2 give the Indemnifier reasonable assistance with the claim if requested.

37.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

37.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

37.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

37.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

37.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the

Beneficiary must immediately repay the Indemnifier the lesser of either:

37.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or

37.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

38. DISASTER RECOVERY AND BUSINESS CONTINUITY

38.1 The Parties shall comply with the provisions of Call-Off Schedule 8 (*Business Continuity and Disaster Recovery*).

39. RECORDS AND AUDIT ACCESS

39.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.

39.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract:

39.2.1 during the Contract Period;

39.2.2 for seven (7) years after the End Date; and

39.2.3 in accordance with GDPR,

including but not limited to the records and accounts stated in the definition of Audit in Joint Schedule 1 (*Definitions*).

39.3 The Buyer or an Auditor can Audit the Supplier.

39.4 During an Audit, the Supplier must:

39.4.1 allow the Buyer or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and

39.4.2 provide information to the Buyer or to the Auditor and reasonable co-operation at their request.

39.5 Where the Audit of the Supplier is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the Buyer.

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

39.6.1 tell the Buyer and give reasons;

39.6.2 propose corrective action; and

39.6.3 provide a deadline for completing the corrective action.

39.7 The Supplier must provide the Buyer with a Self Audit Certificate supported by

an audit report at the end of each Contract Year. The report must contain:

- 39.7.1 the methodology of the review;
- 39.7.2 the sampling techniques applied;
- 39.7.3 details of any issues; and
- 39.7.4 any remedial action taken.

- 39.8 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline

40. VARIATION

- 40.1 The Parties will comply with Joint Schedule 2 (*Variation control procedure*).

41. MISTAKES IN INFORMATION

- 41.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Buyer by the Supplier in connection with the supply of the Deliverables and shall pay the Buyer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Buyer.

42. TAX

- 42.1 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.
- 42.2 The Buyer cannot terminate a Contract where the Supplier has not paid a minor Tax or social security contribution
- 42.3 Where the Charges payable under a Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must:
 - 42.3.1 notify the Buyer in writing within five (5) Working Days of its occurrence; and
 - 42.3.2 promptly provide to the Buyer:
 - 42.3.2.1 details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - 42.3.2.2 such other information in relation to the Occasion of Tax Non-Compliance that the Buyer may reasonably require.

- 42.4 Where the Supplier or any Supplier Staff are liable to be taxed in the UK or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:
- 42.4.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 (including IR35) and all other statutes and regulations relating to National Insurance contributions; and
 - 42.4.2 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.
- 42.5 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:
- 42.5.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 42.4, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
 - 42.5.2 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;
 - 42.5.2.1 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is not good enough to demonstrate how it complies with Clause 42.4 or confirms that the Worker is not complying with those requirements; and
 - 42.5.2.2 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

43. STAFF TRANSFER

- 43.1 The Parties agree that the provisions of Call-Off Schedule 2 (*Staff Transfers*) shall apply.

44. FINANCIAL DISTRESS

- 44.1 The Parties shall comply with the provisions of Joint Schedule 7 (*Financial Difficulties*) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

45. FAILURE TO ACHIEVE MILESTONES

- 45.1 If:
- 45.1.1 a Milestone is not achieved by the relevant Milestone Date; and/or
 - 45.1.2 the Services are not commenced by the Start Date;
- then the Buyer shall be entitled to:
- 45.1.2.1 set off any Losses incurred by the Buyer against any payments otherwise due during the Implementation Period;
 - 45.1.2.2 exercise its rights pursuant to Part B of Joint Schedule 10 (Increased Monitoring);
 - 45.1.2.3 exercise its rights pursuant to paragraph 1.3 of Part A of Joint Schedule 10 (Remedial Adviser);
 - 45.1.2.4 exercise its rights pursuant to paragraph 1.4 of Part A of Joint Schedule 10 (Step-In Rights)
 - 45.1.2.5 exercise its rights pursuant to paragraph 1.2 of Part A of Joint Schedule 10 (Service Exclusion);
 - 45.1.2.6 claim any Losses incurred by the Buyer from the Supplier; and/or
 - 45.1.2.7 require the Supplier to apply such additional resources as are necessary to remedy the delay.
- 45.2 Notwithstanding any other provision in this Contract, the Supplier shall not implement any of the Services unless the same has been Approved by the Buyer.

46. REPORTING A BREACH OF THE CONTRACT

- 46.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:
- 46.1.1 Law;
 - 46.1.2 Clause 13.1; or
 - 46.1.3 Clauses 23, 47, 48, 49, 42 and 50.
- 46.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 46.1 to the Buyer or a Prescribed Person.

47. EQUALITY

- 47.1 The Supplier must:
- 47.1.1 perform its obligations under this Contract (including those in relation to the Deliverables) in accordance with:

- (a) all applicable equality Law;
 - (b) the Buyer's Policies;
 - (c) any other requirements and instructions which the Buyer reasonably imposes in connection with any equality obligations imposed on the Buyer at any time under applicable equality Law; and
 - (d) the provisions of Joint Schedule 5 (*Corporate Social Responsibility & Buyer Policies*).
- 47.1.2 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).
- 47.1.3 not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

48. HEALTH & SAFETY

- 48.1 The Supplier must perform its obligations meeting the requirements of:
- 48.1.1 all applicable Law regarding health and safety; and
 - 48.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 48.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Buyer Premises that relate to the performance of a Contract.

49. ENVIRONMENT

- 49.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 49.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

50. CONFLICT OF INTEREST

- 50.1 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 of Interest.

- 50.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.
- 50.3 CCS and each 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.

51. EXIT STRATEGY

- 51.1 The Supplier shall comply with the provisions of Call off Schedule 10 (*Exit Management*). The Supplier shall produce an outline exit solution within three (3) months of the Start Date which explains the key activities and associated timescales which it will undertake towards the expiry of this Contract in accordance with Call-Off Schedule 10 (*Exit Management*).

52. FINANCIAL DISTRESS EVENT

- 52.1 The Supplier shall comply with the provisions of Joint Schedule 7 (*Financial Difficulties*).

IN WITNESS whereof this Deed has been exhausted the day and the year first before written.

**The corporate seal of the Secretary
of)
State for Work and Pensions is)
hereunto)
affixed and authenticated by:)**

SEAL OF THE SECRETARY OF
STATE FOR WORK AND PENSIONS

[NAME] REDACTED

.....

Authorised Signatory

Executed as a deed by **[COMPANY)
NAME]** acting by [a director and its)
secretary] [two directors]:)

REDACTED

REDACTED

.....

Signature of Director

Director's name

REDACTED

REDACTED

.....

.....

Signature of [Secretary][Director]

[Secretary's][Director's] name