

Jo Clift Consulting
19-20 Bourne Court,
2 Southend Road,
Woodford Green,
Essex,
IG8 8HD

FAO – Jo Clift
By email to:

Date: 09/11/2021
Ref:FS430921 – FSA Board
Effectiveness Review

Dear [REDACTED]

Supply of FS430921 – FSA Board Effectiveness Review

Following your tender/ proposal for the supply of FS430921 – FSA Board Effectiveness Review to the Food Standards Agency, we are pleased confirm our intention to award this contract to you.

The attached contract details ("**Order Form**"), contract conditions and the Annexes set out the terms of the contract between the Food Standards Agency for the provision of the deliverables set out in the Order Form.

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the deliverables. Please confirm your acceptance of the Conditions by signing and returning the Order Form to FSA Procurement through the e-sourcing portal Bravo within 7 days from the date of this Order Form. No other form of acknowledgement will be accepted. Please remember to include the reference number above in any future communications relating to this contract.

We will then arrange for Order Form to be countersigned which will create a binding contract between us.

Yours faithfully,

FSA Procurement

Order Form

1. Contract Reference	FS430921 – FSA Board Effectiveness Review	
2. Date	16/11/2021	
3. Buyer	Food Standards Agency, Floors 6 and 7, Clive House, 70 Petty France, SW1H 9EX, London	
4. Supplier	Jo Clift Consulting 19-20 Bourne Court, 2 Southend Road, Woodford Green, Essex, IG8 8HD Companies House Number: 11922327	
5. The Contract	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any [Annex/Annexes].</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>	
6. Deliverables	Goods	[None]

	Services	To be performed at both the suppliers premises and The Food Standards Agency Office's
7. Specification	The specification of the Deliverables is as set out in Annex 2.	
8. Term	<p>The Term shall commence on 17th November 2021</p> <p>and the Expiry Date shall be 17th May 2022, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p> <p>The Buyer has the option to extend the contract to include the review work package specified in annex 2 for £9,000.00 (Ex VAT). This will extend the Contract to the FY 2023/2024 and will require the Buyer to give 1 Months' notice before processing the extension and is required to confirm and agree specific dates with the supplier prior to signature. This extension is subject to financial and commercial approval.</p>	
9. Charges	The Charges for the Deliverables shall be as set out in Annex 3.	
10. Payment	<p>All invoices must be sent, quoting a valid purchase order number (PO Number) as per the breakdown in Annex 2 and 3, to: [REDACTED]</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [REDACTED] or by telephone [REDACTED] between 09:00-17:00 Monday to Friday.</p>	

<p>11. Buyer Authorised Representative(s))</p>	<p>For general liaison your contact will continue to be</p> <p>Name: [REDACTED]</p> <p>Role: [REDACTED]</p> <p>Email: [REDACTED] [REDACTED]</p> <p>or, in their absence,</p> <p>Name: [REDACTED]</p> <p>Role: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Phone: [REDACTED]</p>	
<p>12. Address notices for</p>	<p>Buyer:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>13. Key Personnel</p>	<p>Buyer:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Supplier:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

14. Procedures and Policies	<p>For the purposes of the Contract the resources engaged in the delivery of the contract will be security vetted to the level of BPSS at a minimum.</p> <p>The supplier will ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects and also keep data classified as OFFICIAL-SENSITIVE secure and confidential.</p>
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Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer
Name: [REDACTED] [REDACTED]	Name: [REDACTED] [REDACTED]
Date: [REDACTED]	Date: [REDACTED]
Signature: [REDACTED]	Signature: [REDACTED]

Signed for and on behalf of the Supplier
Name: [REDACTED] [REDACTED]
Date: [REDACTED]
Signature: [REDACTED]

Annex 1 – Authorised Processing Template

Contract:	[XXXX]
Date:	
Description Of Authorised Processing	Details
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</i></p>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>

Annex 2 - Specification

THE SPECIFICATION, INCLUDING PROJECT TIMETABLE AND EVALUATION OF TENDERS

GENERAL INTRODUCTION

Established in 2000 following several high-profile outbreaks of foodborne illness, the Food Standards Agency (FSA) is the independent government department working to protect public health and consumers' wider interests in relation to food in England, Wales and Northern Ireland. Our mission is food we can trust.

Our work not only protects people but also reduces the economic burden of foodborne illness and supports the UK economy and trade by ensuring that our food has a strong reputation for safety and authenticity in the UK and abroad.

We are responsible for the systems that regulate food businesses, and we are at the forefront of tackling [food crime](#).

The FSA's role does not just cover food safety, but also other consumer interests in food, which include price, availability, and some aspects of food production standards like environmental concerns and animal welfare.

Our work is underpinned by the latest science and evidence and agreed at our open Board meetings. Transparency is a guiding principle for the FSA and key to maintaining public confidence.

Our overarching mission is food we can trust, and our vision is comprised of the following goals:

- Food is safe
- Food is what it says it is
- Consumers can make informed choices about what to eat
- Consumers have access to an affordable diet, now and in the future*

*the FSA only holds [nutrition policy in Northern Ireland](#), not in England and Wales.

The [FSA brochure](#) gives more information about how we have worked to protect your plate over the last 20 years and our vision for the future.

The Agency is committed to openness, transparency and equality of treatment to all suppliers. As well as these principles, for science projects the final project report will be published on the Food Standards Agency website (www.food.gov.uk). For science projects we will encourage contractors to publish their work in peer reviewed scientific publications wherever possible. Also, in line with the Government's Transparency Agenda which aims to encourage more open access to data held by government, the Agency is developing a policy on the release of underpinning data from all of its science- and evidence-gathering projects.

A. THE SPECIFICATION

Background

[The FSA Annual Report and Accounts](#) provides detail on the FSA's core business:

- regulating food businesses including conducting dairy, meat and wine hygiene inspection and working with local authorities and port health authorities
- providing information to the public e.g., Food Hygiene Ratings Scheme
- mitigating risks to public health in the food system through surveillance
- using the best science and evidence to undertake risk analysis of regulated products and develop advice on food safety
- tackling food fraud through the National Food Crime Unit
- managing food safety incidents, and
- taking a lead role internationally on food safety and authenticity on behalf of the UK.

In 2021/22 the FSA also continues to focus on delivering its three priority programmes:

- Achieving Business Compliance
- Food Hypersensitivity
- Operations Transformation Programme.

The FSA is a non-Ministerial government department, which means it is governed by a Board comprised fully of Non-Executive Directors (NEDs), rather than directly by Ministers. The Board ensures the FSA fulfils its legal obligations so that all decisions or actions consider scientific advice and the interests of consumers.

The FSA Board is chaired by Professor Susan Jebb and currently has eight other Members. They are responsible for the overall strategic direction of the organisation. Day-to-day management is delegated to officials through the Chief Executive.

The Board is mainly appointed by the Secretary of State for Health and Social Care. One Member is appointed by the Welsh Health Minister, and one by the Northern Ireland Health Minister.

All Members of the FSA Board have a responsibility to:

- ensure the FSA discharges its statutory duties in line with the requirement to protect public health and consumer interests in relation to food
- set and to reinforce the FSA's core values through the development and monitoring of strategic objectives, plans and policies
- represent the FSA and its values
- play an effective part in Board meetings, discussions and decisions
- monitor the performance of the Executive in meeting agreed objectives and targets, including: the delivery of services; continuous improvement; financial performance, and risk management
- assist with the appointment of the Chief Executive
- participate as a member or Chair of one or more of the Board Committees: Business, and Audit and Risk Assurance
- act in the public interest at all times, not as a representative of the interests of any particular sector, and without regard to any personal interests
- commit up to 20 days per annum to their FSA responsibilities. This covers Board and Committee meetings; Board awaydays, training and workshops; FSA events; travel to meetings across the UK; and thorough preparation for Board business.

Board Members receive advice and support from the Executive in respect of their duties and are provided with background information in order to carry out their responsibilities. There is a dedicated secretariat to support the Board. The FSA Board is a paperless body.

The longest-serving Board Member was appointed in 2016, three NEDs were appointed in 2019, the Deputy Chair and one more NED were appointed in 2020 and our two most recent Members were appointed in June 2021; the Chair took up her appointment in July 2021.

The FSA Board is an open and transparent decision-making body. Board meetings are held in public, are live streamed and recorded, and policy making, and decisions take place in open session.

The Board gathers six times in the year: four Board meetings and Business committee meetings, each for two days in public; and two strategic or retreat events, for one or two days in private. The Audit and Risk Advisory Committee (ARAC) meets five times a year in private.

Further information about Board Members and how the Board works can be found in the Code of Conduct and Standing Orders documents on the website <https://www.food.gov.uk/about-us/our-board>.

The Board has two Committees:

- Business Committee (BC)
- Audit and Risk Assurance (ARAC)

Both Committees are in scope of this review.

The Business Committee exists to provide appropriate high-level oversight of financial and operational matters at Board level and support the translation of policy into effective results.

The meetings are open unless there are issues that need to be discussed in private because of the following reasons:

- the meetings relate to issues that are commercial and in confidence
- are the subject of live negotiations in which the public interest could be adversely affected
- are related to individuals.

The Terms of Reference for the Business Committee can be found on our website <https://www.food.gov.uk/about-us/committees-of-the->

[fsa-board.](#)

The Audit and Risk Assurance Committee (ARAC) is a committee of the FSA Board.

ARAC is responsible for reviewing, in a non-executive capacity, the reliability of assurances on governance, risk management and the control environment. It is also responsible for reviewing the integrity of financial statements and the Food Standards Agency Annual Report and Accounts.

The Terms of Reference for the ARAC can be found on our website <https://www.food.gov.uk/about-us/committees-of-the-fsa-board>.

[The Corporate Governance Code for Central Government Departments 2017](#) requires that a Board effectiveness evaluation is carried out annually and with independent input at least once every three years.

In the Annual Governance Reports to the FSA Board in [September 2019](#) and [August 2020](#) the Board agreed to wait until the UK had exited the EU and the new arrangements for the Board (as agreed in Board paper [FSA 18-09-08 Governance Review](#)) had been properly tested before commissioning a full external review of its operations.

While the impact of the new arrangements post-EU for the Board has still not been fully tested, the Chair feels that, with her recent appointment, it is timely to undertake an external effectiveness review of the Board this year.

An external review at the beginning of the new FSA Chair's tenure will help her to identify how best to work with the Board and improve its role in FSA governance.

Internal Board effectiveness reviews are carried out each year. This external effectiveness review is intended to be an in-depth critical appraisal of the way the Board works that provides constructive feedback and recommendations to improve the performance of the Board.

The scope of the external Review will be in line with the [Corporate Governance Code for Central Government Departments 2017](#) and include: how the Board and its Committees are organised; what skills the Board Members have; as well as relationships and behaviours among the Board and between the Board and the Executive team.

It is expected that the external review will examine both the formal, visible structures through which the Board operates, but also the more informal and less tangible aspects about how we operate, including the nature and tone of working relationships between the Board and Chair and the Executive.

The external Board Effectiveness Review will be concluded by the end of this financial year.

The Specification

SCOPE OF THE SERVICES REQUIRED

- 3.1 It is considered good practice to undertake periodic external reviews of an organisations' Board and its Committees. We are therefore seeking an externally facilitated governance review of the effectiveness of our Board and Committee arrangements to ensure the Board discharges its responsibilities effectively and has the right mechanisms and structure in place to deliver the aims of the new Strategy.
- 3.2 The scope of the review should seek to cover the following:
- The overarching culture and tone set by the Board. Clarity of, and leadership given to, the purpose, direction and values of the FSA
 - How the Board has appropriately influenced government, reflecting consumer interests in policy making (are we striking the right balance of working alongside, getting things done but not losing our independence?)
 - How the Board communicates with, and listens and responds to, its organisation and other stakeholders
 - The mix of skills, experience and knowledge on the Board, in the context of developing and delivering the strategy, the challenges and opportunities, and the principal risks facing the FSA
 - Succession and development plans
 - Quality and timing of papers and presentations to the Board
 - Quality of discussions around individual proposals and time allowed. The process the Chair uses to ensure sufficient debate for major decisions or contentious issues - including how constructive challenge is encouraged

- Effectiveness of Board committees, and how they are connected with the main Board
- How the Board and its subcommittees support the Accounting Officer in meeting the requirements set out within [Managing Public Money](#). Clarity of the decision-making processes and authorities. How the Board has had regard to it
- Processes for identifying and reviewing risks; and
- How the Board's practices, relationships and cultural norms compare with Boards of other Non-Ministerial Departments

The proposed contract for services is to run from November 2021 and to be completed no later than 31 March 2022.

3.3 Objectives

The objectives of this review are as follows:

- a) An independent evaluation of the way that the Board and its Committees currently conduct their business with a focus on:
 - meetings process and administration (e.g., have we got the right sub committees, the right Terms of Reference, does the informal arrangement of Board Members shadowing topics work?)
 - culture and dynamics (e.g., do people feel safe to challenge, how can the Board do better at having frank conversations in open, what's the relationship like between Board and Executive and what does good look like) and
 - the relationship between the Board and its Committees.
- b) A forward-looking evaluation to advise how Board and ARAC business could evolve to ensure the right mechanisms and structures are in place to:
 - deliver the new Strategy which is currently under development
 - have sufficient oversight of change projects
 - continue to focus on governance, risks and controls, taking into account actions which are already in progress within FSA
 - and any opportunities created by COVID-19 for how the Board can operate more effectively.

3.4 The review seeks a wider challenge and forward-looking perspective than can be achieved through our process of conducting informal internal effectiveness reviews.

3.5 It also fulfils a requirement of our chosen [code of governance](#), which recommends that effectiveness reviews should seek independent input at least every three years.

3.6 The scope of the review is expected to be broad and be cognisant of other sources of governance best practice (such from the [Financial Reporting Council](#) and [National Audit Office](#)). We would expect the supplier to consider how best to blend these sources into the review.

3.7 The project is estimated to commence in November; the main objective is to have the review completed to a high-quality standard.

We would also like the option for the successful bidder to return after 15-18 months to review and report back on our implementation of recommendations. Please mark a separate cost for this follow-up review on the financial template.

3.8 Methodology

The FSA does not wish to be overly prescriptive or impose any constraints on how the review can be delivered but as a minimum, we expect that that when providing the service, the successful bidder will:

- work with the Chair, Chief Executive and Executive Management Team, engaging with all Board and ARAC Members
- use both qualitative and quantitative aspects to inform their conclusions
- conduct one to one interviews (remotely or in person – see 4 below) to discuss reflection and insights, including what Board members value, changes that might be positive and make a difference
- seek the views of the Executive Management Team and senior colleagues in the business

- 'Observe' the ARAC meeting on 24 November and the Board and Business Committee meetings on 8 December
- benchmark against other public and private sector organisations
- discuss a draft with the Chair to develop this for presentation to and discussion with the Board.

3.9 Outputs

The reviewer will be expected to generate two reports. The reviewer will generate a report with detailed findings, conclusions and a roadmap of recommendations which can guide the Board in taking forward a process of continuing improvement. A draft of this full report should be prepared for comment by early January, including a meeting to discuss the findings with the Chair.

An Executive Summary of the full report findings will be presented to the meeting of the Board in public on 9 March 2022. The Executive Summary report should meet the Web Content Accessibility Guidelines at Level AA.

4 CONSTRAINTS

4.1 Potential bidders should be aware of the following constraints that will apply to this contract.

(i) Contract duration

- The proposed contract for services is to run from November 2021 and to be completed no later than 31 March 2022.

(ii) Security constraints

- The successful contractor will have access to information marked OFFICIAL-SENSITIVE relating to the organisation's work.

All members of the project team will require appropriate security clearance to baseline personnel security standard as a minimum,

<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

Clearance of personnel will be required **before** any information can be shared and must not delay the project.

- The security of FSA organisation and personal data is essential and bidders must provide details of how they will ensure this and comply with any relevant legislation. Bidders should also declare if they are registered with the Information Commissioner. <https://ico.org.uk/>

(iii) Conflicts of interest:

- Bidders should declare if they are aware of any actual or Potential conflicts of interest in providing these services to the FSA. If so, bidders should set out how these are to be suitably managed or mitigated.

(iv) Experience:

- Any contractor must be able to demonstrate an appreciation of the regulatory environment within which FSA operates and our status as a non-ministerial government department.

(v) Working arrangements:

- FSA colleagues are working from home until April 2022, at least. This is likely to mean all of the work will be carried out remotely with interviews via video link etc.

5 CONTRACT MANAGEMENT

5.1 Both FSA and the successful bidder will appoint a Contract Manager to oversee that the delivery of the Services are in accordance

with the provisions of the Contract.

- 5.2 FSA will require to be kept updated about progress and delivery of the required work via regular meetings, to include a contract start-up meeting. Subsequent progress meetings should be arranged with the Board Secretariat Team.
- 5.3 The point of contact in FSA will be the Head of Board Secretariat. The key relationships are with the Board Chair and ARAC Chair.
- 5.4 FSA will require that the successful bidder has robust arrangements in place via a Business Continuity Disaster Recovery Plan, in order to be assured of continuity of service in the event of any unforeseen or planned disruption.

6 TENDER RESPONSES

Suppliers must complete the Tender Application Form with details of their technical response and the Financial template with their pricing details. The technical response should include the below and address the specific questions in the Tender Application Form:-

Understanding the requirement

- A capability statement providing a broad understanding and knowledge of the requirements, including the context in which FSA operates; and
- Confirmation that you can meet the constraints identified in item 4 above

Capability and experience

- Details of proposed team members and a brief biography of how their key skills, experience and qualifications align to the delivery of the review;
- Outline roles and responsibilities of team members; and
- A proven track record of undertaking similar reviews for other customers, including references to seek verification of that work.

Service delivery

- A description of how you will deliver the work, methodologies employed and the resources to be used
- A project delivery plan showing activities and milestones
- If you plan to use any sub-contractors to deliver any part of the service requirements
- Details of what support the review team will require from FSA; and
- Details of any assumptions or constraints.

Contract management

- Arrangements for managing delivery of the work including details of who will act as the liaison point with FSA
- An outline of anticipated engagement (progress meetings & management), delivery updates, to include a contract start-up meeting
- FSA requires that the successful supplier has, and is able to implement, an appropriate Business Continuity plan; and
- FSA requires that the successful Supplier has a robust system in place for resolving day to day operational and access issues, including appropriate escalation processes.

Financial information to be detailed in the financial template provided

- A fixed fee for the review including estimates of any incidental expenses incurred; and
- The cost of the option for the successful supplier to return after 15-18 months to review and report back on our implementation of recommendations. Please mark a separate cost for this follow-up review on the financial template.
- A breakdown of the utilisation of team members supported by their associated charge rates.

'Please outline in your tender how you will comply with the GDPR, recognising the commissioning authority's role as the 'data controller' and the contractor's role as the 'data processor', and responding to the sections below. If successful you may also be asked to carry out a Privacy Impact Assessment (PIA), and a privacy notice may be required, which will be reviewed by the FSA data security team. In addition, please outline in your tender how the organisation will handle OFFICIAL-SENSITIVE data in compliance with government information handling protocols.

Data security

Please confirm in your tender that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects and also keep data classified as OFFICIAL-SENSITIVE secure and confidential.

Please provide details of the technical facilities and measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects and also keep data classified as OFFICIAL-SENSITIVE secure and confidential. Your response should include, but should not be limited to facilities and measures:

- to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services

- to comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data
- to ensure that any consent-based processing meets standards of active, informed consent, and that such consents are recorded and auditable
- to ensure legal safeguards are in place to legitimise transfers of personal and commercial data outside the EU (if such transfers will take place)
- to maintain records of personal data processing activities; and
- to regularly test, assess and evaluate the effectiveness of the above.

Please note the FSA Information Security Standard for suppliers handling Official Sensitive information is set out in Table 3 below. If you are unable to meet any elements of this standard please explain, why you do not think they are necessary or any other alternative measures that you have in place.

B. PROCUREMENT TIMETABLE

Table 1 details an **estimated** project timetable for the project. Tenderers should however be aware that the Agency needs to acquire the evidence outlined in this ITT in a timely manner and you should justify your timings in your work plan.

TABLE 1. ESTIMATED PROJECT TIMETABLE	
EXPECTED DATE	INVITATION TO (ITT) TENDER
Wednesday 29th September 2021	Invitation to Tender (ITT) issued by the Agency
Immediately as above	ITT Clarification period opens*
Midday Wednesday 13th October 2021	ITT Clarification period closes**
Midday Thursday 21st October 2021	Closing date for submission of ITT responses***
22 October – 1 November 2021	Evaluation of ITT responses
w/c 1st November 2021	Appraisal panel meeting held to consider clarified ITT responses
w/c 8th November 2021	Tenderers notified of outcome of appraisal and preferred Tenderer (or Tenderers) identified
w/c 15th November	Contract awarded and signed
As soon as possible following contract award – w/c 15 November 2021	Project initiation meeting takes place and project commences

* If a Tenderer wishes to raise any points of clarification over the procurement process, the actual project objectives or any other query these must be raised through the ECMS by the date specified.

** Queries will not be answered after this date.

*** Submissions must be uploaded onto the ECMS before the closing date and time.

§ These stages are optional

Further Information

For any technical queries or issues regarding the use of ECMS please contact the eSourcing Helpdesk:

Phone: 0800 368 4850

Email: help@bravosolution.co.uk .

For any points of clarification regarding this specification or the FSA's procurement procedures please submit through ECMS.

Closing Date

Tenders should be submitted on ECMS by the date specified on ECMS.

Tenders received after this time will not be considered or evaluated. Please allow sufficient time to upload your tender and all supporting evidence before the closing date.

Notification of Submission of Tender

On successfully submitting your tender you should see a popup box appear on the screen indicating that your tender has been successfully submitted. In addition you will receive an automatic email from ECMS with a reference code.

C. EVALUATION OF TENDERS

The Tenderers Application consists of the:

- Technical envelope 80% of overall value, in which applicants should detail the approach, the work plan and their ability to undertake the work, and
- Commercial envelope 20% of overall value, in which applicants should outline all costs to conduct the proposed work, and
- Any other relevant supporting information

These weightings and criteria are not set and to be decided for each individual tender. Please note if you are utilizing a framework then these weightings and criteria may be set by the framework guidelines and therefore must be followed. Tenders will be evaluated by FSA evaluators using a numerical system. The table below shows example weightings that have

been allocated to each section of the application form and these used by the evaluators: -

TABLE 2. EVALUATION CRITERIA FOR SELECTION OF SUCCESSFUL TENDERER	
CRITERIA	PERCENTAGE WEIGHTINGS
TECHNICAL CRITERIA – 80% overall Value	Made up of
1. Delivery of the Requirements	40%
2. Organisational experience, expertise and staff effort	10%
3. Project management	5%
4. Added Value and Innovation	20%
5. Quality management, ethics, data protection, dissemination and sustainability	5%
COMMERCIAL CRITERIA – 20% overall value	20%

The Technical Envelope

Guidance on how to complete each section is provided within the actual application form.

A numerical appraisal scoring system will be used to assess the information given in the Technical envelope of the tender. Evaluators will allocate a score of 0, 30, 60, 80 or 100 to each part of the Technical envelope, depending on the quality and relevance of evidence provided. The scores will then be subjected to the weightings given in Table 2.

All technical criteria will be evaluated as follows:

SCORE	DESCRIPTION FOR SCORE OF EACH CRITERIA
100	Tender fully meets or exceeds the criteria set
80	Tender would require minor modification but almost fully meets the criteria with only a few gaps in the evidence remaining
60	Tender would require some modification but addresses most of the criteria, but may not be detailed enough and/or has several gaps remaining
30	Tender would require significant modification due to significant gaps
0	Tender does not meet the specification or policy

If the applicant does not reach a minimum score of 30 in the technical evaluation they will be automatically eliminated from the process.

The Commercial Envelope

Guidance on how to complete each section is provided within the actual application form.

A numerical appraisal scoring system will be used to assess the information given in the commercial envelope of the tender. Evaluators will allocate a score of 0, 30, 60, 80 or 100 to the commercial envelope, depending on the quality and relevance of evidence provided. The scores will then be subjected to the weighting given in Table 2.

Requirement for the commercial envelope

Please complete the Commercial template provided. Costs should be quoted excluding VAT for the purpose of comparison of tenders. The Agency's financial year runs from 1 April to 31 March. All costings should be recorded in line with this timescale.

Evaluation of the commercial envelope

Commercial criteria will be evaluated as follows:

SCORE	DESCRIPTION FOR SCORE OF THE CRITERIA
100	There is full justification for the costs and the overall resources are appropriate. The tender is the best value for money for the work proposed to meet the specific evidence requirement advertised
80	There is some justification for the costs and the overall resources requested. The tender is reasonable value for money for the work proposed to meet the specific evidence requirement advertised.
60	Limited rational is given for the resources requested and/or the tender does not offer very good

	value for money, but is not poor value
30	The tender is relatively poor value for money with little/no justification for costs or resources requested.
0	The tender costs are not considered value for money and the applicant provided no rationale for costs or resources requested

TABLE 3 FSA Information Security Standard - Other services

Category	1. Governance Requirements	Other Services service or system
Principles of Security	The Supplier shall be responsible for the confidentiality, integrity and availability of FSA data whilst it is under the control of the Supplier and consequentially the security of the system/service	essential
Certification	The Supplier is certified to ISO/EC 27001:2013 by a UKAS approved certification body or included in the scope of an existing certification of compliance of ISO/IEC 27--1:2013	desirable
Certification	the supplier has Cyber Essentials PLUS	essential
Security Testing: IT Health check	the Supplier must be able to provide a copy of the report of an IT Health Check by a CHECK IT supplier and a remedial action plan conducted in the last 12 months of the System/Service/Environment where FSA data will be stored	desirable
Security Testing: IT Health check	The FSA may decide to carry out an FSA led IT Health Check or penetration test of the system/service before go live which the Supplier must support	desirable
Policies and Assurance	The Supplier will provide copies of their data protection policy to the FSA	desirable
Policies and Assurance	The Supplier will provide copies of their security patching, protective monitoring, access and security policies to the FSA	desirable

Policies and Assurance	The Supplier will work with the FSA to complete a Personal Data Processing Statement as part of the contract	desirable
Policies and Assurance	The Supplier will work with the FSA to mitigate any risks assigned to them in the Privacy Impact Assessment if applicable	essential
Policies and Assurance	the Supplier will notify the FSA immediately if they identify a new risk to the components or architecture of the system/service that could impact the security of FSA data, a change in threat profile or proposed change of site	essential
Compliance Audits	The Supplier will support compliance with security assurance audit activity carried out by FSA against these requirements see link https://www.gov.uk/government/publications/government-supplier-assurance-framework	essential
Incident and Breach Management - reporting	If the Supplier becomes aware of a Breach of Security covering FSA data (including a Personal data breach) the Supplier will inform the FSA at the earliest opportunity	essential
Incident and Breach Management - response	The Supplier must do the following upon becoming aware of a Breach of Security or attempted Breach of Security; Immediately take all reasonable steps necessary to minimise the extent of harm caused; remedy such Breach of Security to the extent possible; apply a mitigation against any such Breach of Security; and prevent a further Breach of Security in the future which exploits the same root cause failure.	essential
Incident and Breach Management - analysis	following the Breach of Security or attempted Breach of Security the Supplier must , provide to the FSA full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the FSA.	essential
2. SECURITY REQUIREMENTS		Other Services service or system
End User Devices	The Supplier will ensure that any FSA Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the FSA except where the FSA has given its prior written consent to an alternative arrangement.	essential
End User Devices	The Supplier will ensure that any device which is used to Process FSA Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: https://www.ncsc.gov.uk/guidance/end-user-device-security .	essential
Networking	The Supplier will ensure that any FSA Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.	essential
Personnel Security	all Supplier personnel will be subject to a pre-employment check before they participate in the provision of services covering the checks required by the HMG Baseline Personnel Security Standard (verification of identity, nationality and immigration status, employment history and criminal record	essential

Personnel Security	The Supplier will work with FSA to determine if any roles require additional vetting and a specific national security vetting clearance. Roles which are likely to require additional vetting include system administrators whose role would provide those individuals with privileged access to IT systems which process FSA Data which is classified as OFFICIAL-SENSITIVE.	essential
Personnel Security	The Supplier shall not permit Supplier Personnel who fail the security checks required by the first two requirements to be involved in the management and/or provision of the Services except where the FSA has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.	essential
Personnel Security	The Supplier shall ensure that Supplier Personnel are only granted such access to FSA Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.	essential
Personnel Security	The Supplier will ensure that any Supplier Personnel who no longer require access to the FSA Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the FSA Data revoked within 1 Working Day.	essential
Identity, Authentication and Access Control	The supplier must provide an access control regime that ensures all users and administrators of the Supplier System/Service are uniquely identified and authenticated when accessing or administering the Services	desirable
Identity, Authentication and Access Control	The Supplier must apply the 'principle of least privilege' when setting access to the Supplier System/Service so that access is set for only parts of the Supplier System/service they require.	essential
Identity, Authentication and Access Control	The Supplier must retain records of access to the Supplier System/Service and make them available to the FSA on request for supplier assurance.	desirable
Identity, Authentication and Access Control	The Supplier must provide configurable role based access	desirable
Identity, Authentication and Access Control	The Supplier should automatically log a user out after a configurable period of user inactivity	essential
Identity, Authentication and Access Control	The Solution must not allow multiple logins from the same account at the same time	essential
Event Logs and Protective Monitoring	The Supplier shall collect audit records which relate to security events that would support the analysis of potential and actual compromises.	essential
Event Logs and Protective Monitoring	In order to facilitate effective monitoring such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of FSA Data.	desirable
Event Logs and Protective	The Supplier and the FSA shall work together to establish any additional audit and monitoring requirements	desirable

Monitoring		
Event Logs and Protective Monitoring	The retention periods for audit records and event logs must be agreed with the FSA and documented	desirable
Hosting and Location of FSA Data	The Supplier shall ensure that they and none of their Sub-contractors Process FSA Data outside the EEA (including backups) without the prior written consent of the FSA.	essential
Vulnerabilities and Patching	The FSA and the Supplier acknowledge that from time to time vulnerabilities in the Supplier System/Service will be discovered which unless mitigated will present an unacceptable risk to the FSA Data. The Supplier must supply a copy of their patching strategy/policy and assessment process to FSA on request	essential
Vulnerabilities and Patching	The severity of vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised to the vulnerability scoring of the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively	essential
Vulnerabilities and Patching	the Supplier shall deploy security patches for vulnerabilities in the Core Information Management System within: 7 days after the release for High vulnerabilities, 30 days after release for Medium and 60 days for low.	essential
Vulnerabilities and Patching	The timescales for applying patches to vulnerabilities shall be extended if the FSA agrees a different maximum period after a case-by-case consultation with the Supplier which could be if the Supplier can demonstrate that a vulnerability is not exploitable within the context of the Services If the application of a 'Medium' or 'High' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension	desirable
Vulnerabilities and Patching	The Supplier will provide documented evidence to demonstrate the provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to ensure it is always in mainstream support unless otherwise agreed by the FSA in writing.	desirable
Malicious Software	the supplier shall install and maintain anti-Malicious Software for the system /service where FSA data is stored and identify contain and minimise the spread of any Malicious Software introduced	essential
Malicious Software	If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of FSA Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.	essential
Secure Architecture	The Supplier must give a brief overview and supply a design of the systems and architecture that will be used to retain the FSA data held	essential
Secure Architecture	The Supplier must ensure the system service is designed in accordance with the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main ;	essential
Secure Architecture	The Supplier must ensure the System./Service is designed in accordance with the NCSC "Bulk Data Principles", a copy of which can be found at https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main	essential

Secure Architecture	The supplier must ensure the System/Service is designed in accordance with the NSCS "Cloud Security Principles", a copy of which can be found at: https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles and which are summarised below:	essential
Secure Architecture	1. data in transit protection- which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;	essential
Secure Architecture	2. asset protection and resilience - which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;	essential
Secure Architecture	3. separation between users - which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;	essential
Secure Architecture	4. governance framework - which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;	essential
Secure Architecture	5. operational security - which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;	essential
Secure Architecture	6. personnel security - which, amongst other matters, requires that where Supplier Personnel have access to FSA Data and/or the FSA System that those personnel be subject to appropriate security screening and regular security training;	essential
Secure Architecture	7. secure development- which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;	essential
Secure Architecture	8. supply chain security - which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;	essential
Secure Architecture	9. secure user management - which, amongst other matters, requires the Supplier to make the tools available for the FSA to securely manage the Authority's use of the Service;	essential
Secure Architecture	10. identity and authentication - which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;	essential
Secure Architecture	11. external interface protection - which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;	essential
Secure Architecture	12. secure service administration - which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;	essential
Secure Architecture	13. audit information for users - which, amongst other matters, requires the Supplier to be able to provide the FSA with the audit records it needs to monitor access to the Service and the FSA Data held by the Supplier and/or its Sub-contractors; and	essential
Secure Architecture	14. secure use of the service - which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.	essential
Protection for Digital Services	The Supplier will ensure the web application is not susceptible to common security vulnerabilities, such as described in the top ten Open Web Application Security Project (OWASP) vulnerabilities	essential
Protection for Digital Services	The Supplier will ensure externally facing services have DDoS protection	essential
Protection for Digital Services	The Supplier will ensure externally facing services have a Web Access Firewall	essential

Protection for Digital Services	The Supplier will regularly test for the presence of known vulnerabilities and common configuration errors	essential
3 DATA REQUIREMENTS		Other Services service or system
Data Security Classification	If the provision of the Services requires the Supplier to Process FSA Data which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the FSA from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.	essential
Data Protection Compliance	The Supplier must ensure and confirm that the data being hosted and represented for the FSA is physically segregated and contained from other clients of the Suppliers.	essential
Data Protection Compliance	The System/Service must be compliant with the Data Protection Act 2018 (specifically Schedule 3 for FSA)	essential
Data Protection Compliance	The Supplier System/Service must support: accuracy quality and relevancy of data data minimisation access to data limited to those needing access data is only used for specified purposes agreed with FSA	essential
Data Protection Compliance	The Supplier must have systems and processes to effectively support the FSA to manage, notify and respond to individual GDPR rights requests and complaints from individuals within timescales mandated by GDPR where they are the Data Controller	essential
Data Protection Compliance	The Supplier personnel must be trained in data protection requirements, policies and processes	essential
Data Protection Compliance	The Supplier must have systems to meet GDPR records of processing requirements and processes to evidence compliance with data protection requirements mandated by GDPR	essential
Data Protection Compliance	The Supplier must have systems, processes and measures to ensure processors/ sub-processors meet data protection requirements as mandated by GDPR	essential
Retention Deletion and Destruction	The Supplier must ensure the FSA can apply data archiving and retention policies to the System/Service	essential
Retention Deletion and Destruction	The Service/System must allow FSA/Supplier to rectify, erase or update incomplete data and delete information in line with retention periods	essential
Retention Deletion and Destruction	The Supplier must have documented processes to ensure the availability of FSA Data in the event of the Supplier ceasing to trade;	essential
Retention Deletion and Destruction	The Supplier must securely erase in a manner agreed with the FSA any or all FSA Data held by the Supplier when requested to do so by the Authority;	essential



[Redacted text block]

[Redacted text block]

Please detail how you will deliver the work set out in the specification.



[Redacted text block]

[Redacted]	[Redacted]	[Redacted]	[Redacted]
------------	------------	------------	------------

[Redacted text block]

[Redacted text block]

Please provide details of what support the review team will require from the FSA

[Redacted text block]

Please confirm that you can meet the constraints identified in section 4 of the specification, specifically that you

are already security cleared or can be in time for the start of the contract.

- [REDACTED]
- [REDACTED]
- [REDACTED]

2: ORGANISATIONAL EXPERIENCE, EXPERTISE AND STAFF EFFORT (10%)

Please answer the questions below: -

Please provide examples of previous experience in undertaking similar reviews for other government departments

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted content]

Please provide details of the proposed staff and a brief biography of how their key skills, experience and qualifications align to the delivery of the review



[Redacted text block]



[Redacted content]																
[Redacted content]																

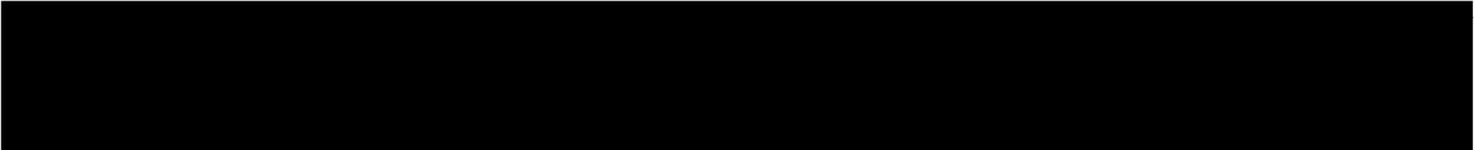
3: PROJECT MANAGEMENT (5%)

Please answer the questions below: -

Please fully describe how the project will be managed, including a project plan with outline of meetings to schedule

[Redacted content]

[Redacted content]



FSA requires that the successful supplier has, and is able to, implement an appropriate Business Continuity plan. Please provide details.



ADDED VALUE & INNOVATION (20%)

Please answer the questions below: -

How have you previously added value to board effectiveness reviews?





[Redacted text]

[Redacted text]

How have you previously helped boards innovate in how they are effective?

[Redacted text]

[Redacted text]

[Redacted]

[Redacted]

From what you know of how the FSA Board operates already have you identified any possible improvements to the way it operates?

[Redacted]

[Redacted]

[Redacted]

5. QUALITY MANAGEMENT, ETHICS, DATA PROTECTION, DISSEMINATION (5%)

Please answer the questions below: -

How will you ensure the quality of the products that are produced?

[Redacted]

[Redacted]

[Redacted]

[Redacted]

How will you ensure that the Executive Summary of the Report which is to be published will meet the to level AA, as a minimum?

[Redacted]

Please identify any specific data protection issues for this project and how these will be managed. Please respond to any specific issues raised in the Specification document.

[Redacted]

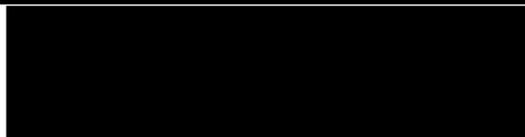
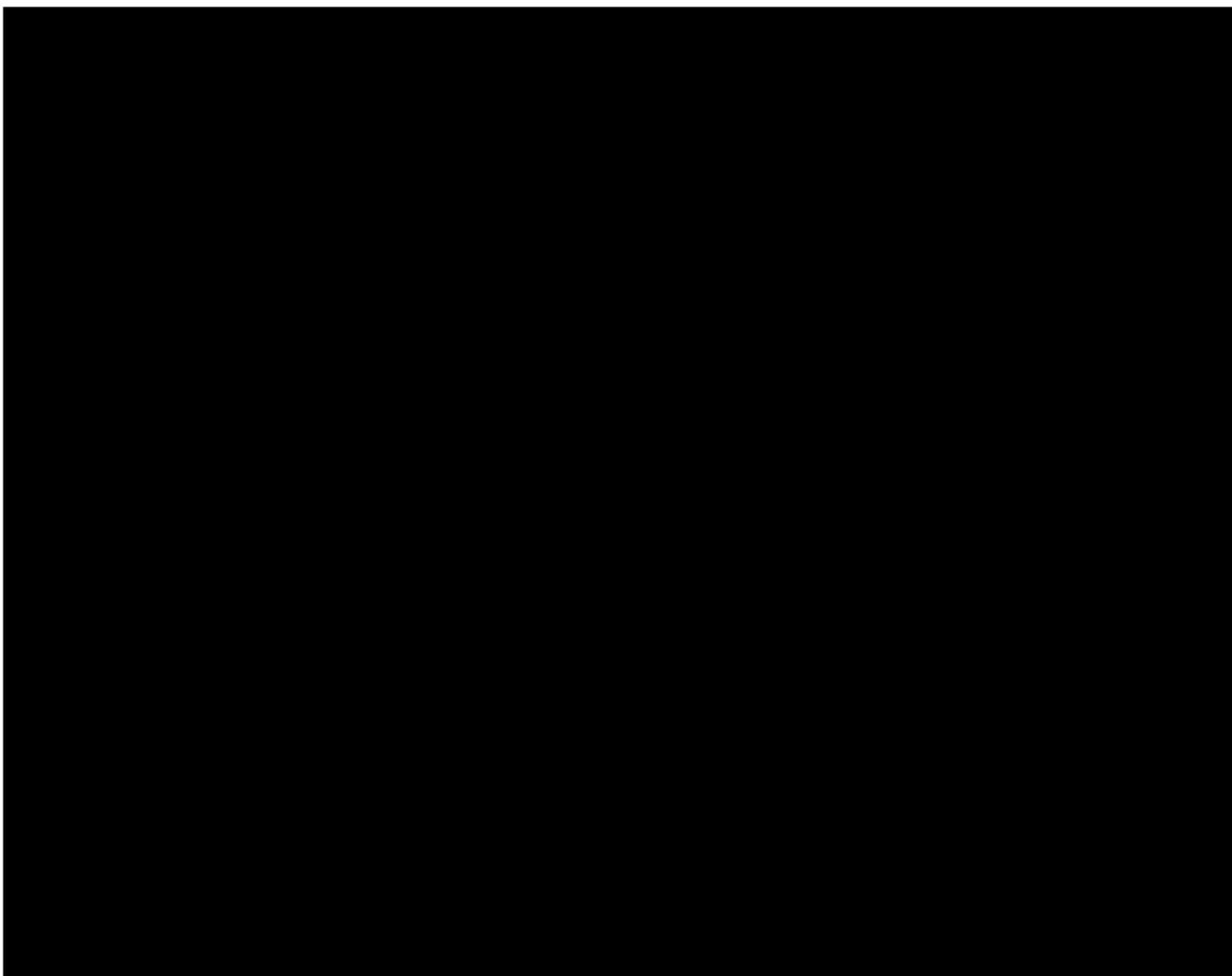
Please note that the successful Applicant will be expected to comply with the UK General Data Protection Regulations and the Data Protection Act 2018 when processing personal data, adhere to any information confidentiality requirements and have appropriate organisational and technical measures in place to ensure that information collected, processed and transferred on behalf of the FSA, is done securely and in line with minimum government security standards.

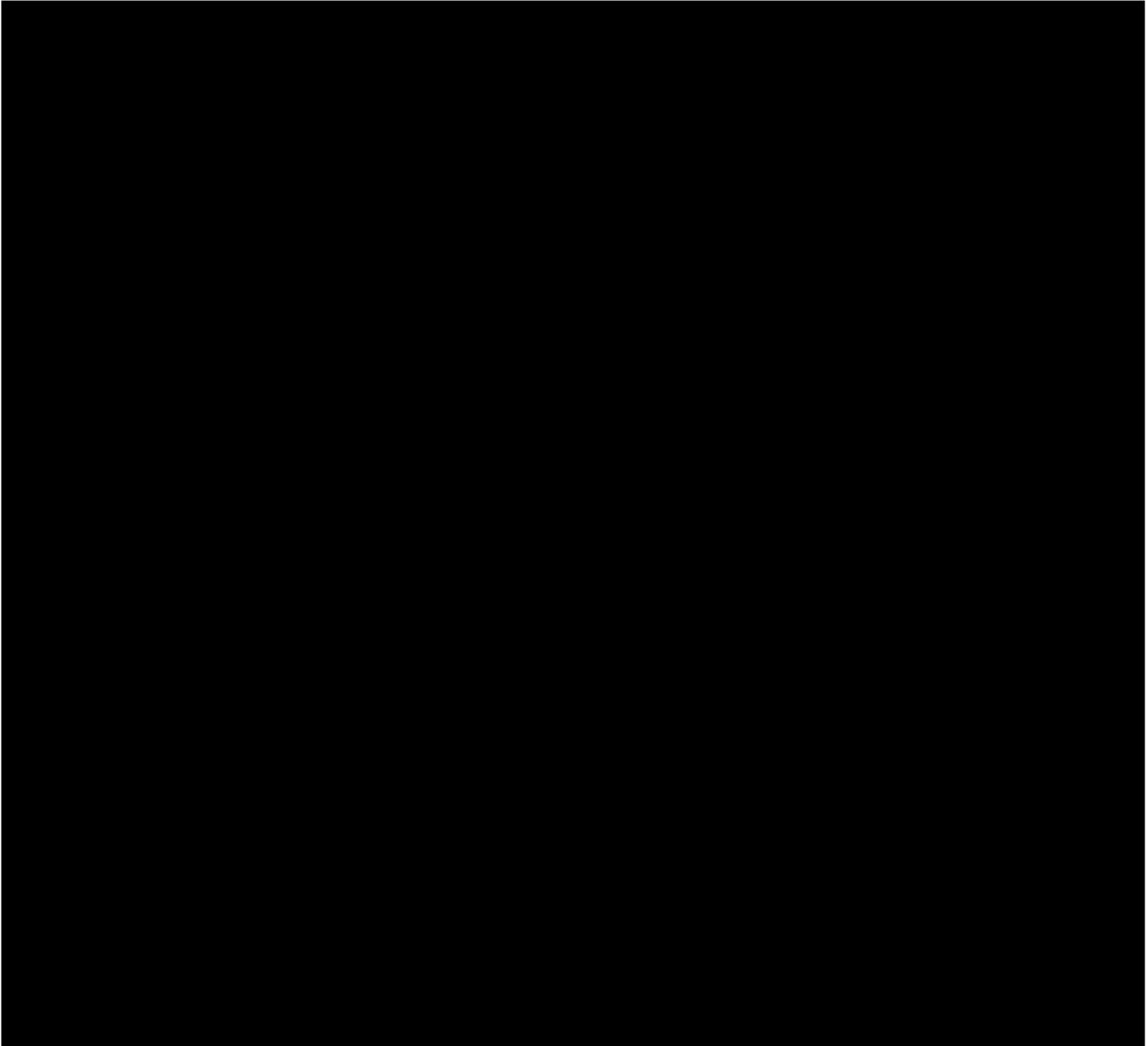
In this part please provide details of the practices and systems which are in place for handling data securely, plans for how data will be deposited (i.e. within a community or institutional database/archive) and/or procedures for the destruction of physical and system data should also be included in this part. The applicant will be responsible for ensuring that they and any sub-contractor who processes or handles information on behalf of the FSA are conducted securely.

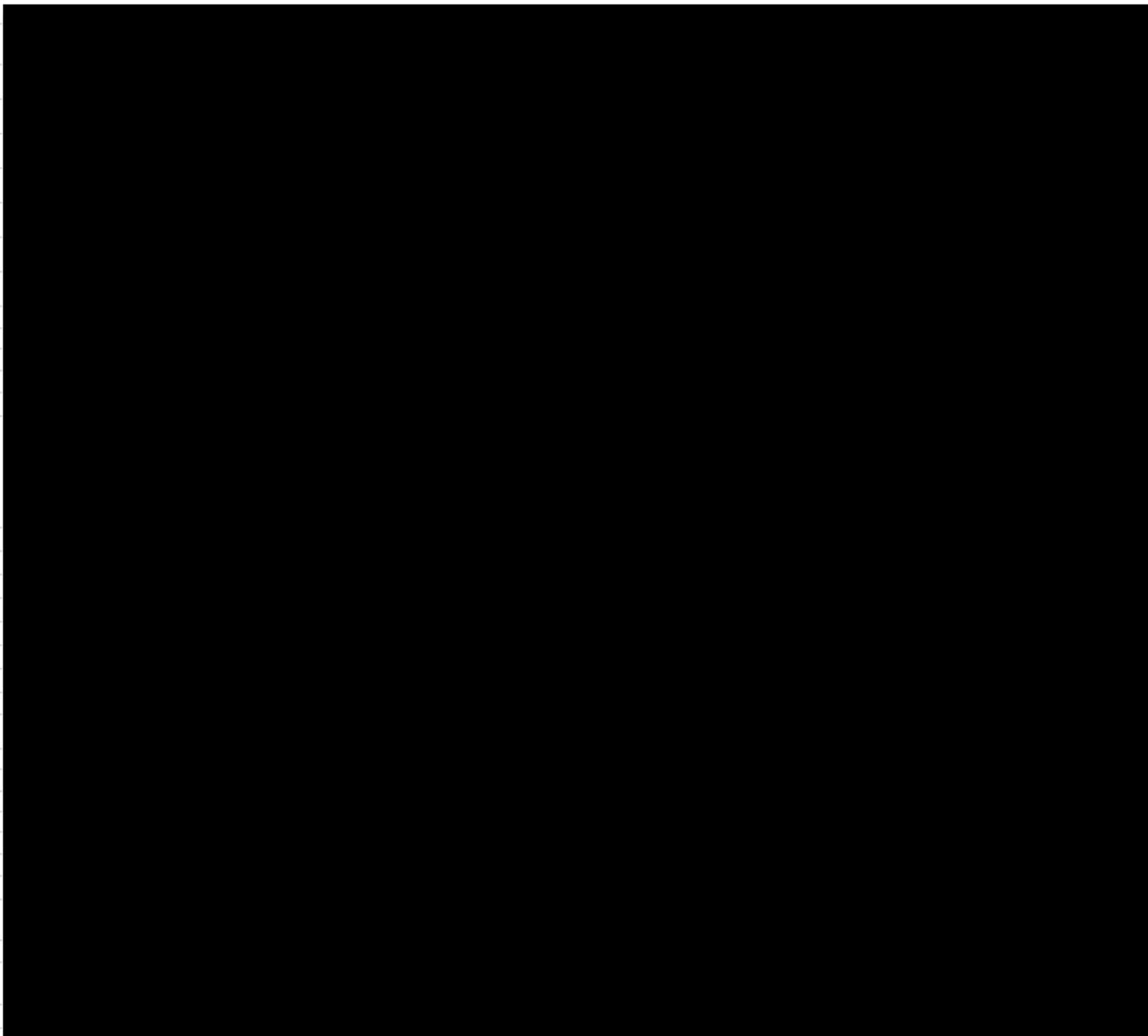
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- the tender title,
- the name of the lead applicant submitting the proposal and
- the part number and title to which the supporting evidence appertains (e.g. Part 3 Deliverables)

Annex 3 - Charges







Short form Terms

1. Definitions used in the Contract

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

"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Charges"	means the charges for the Deliverables as specified in the Order Form;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contract"	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
"Controller"	has the meaning given to it in the GDPR;
"Buyer"	means the person identified in the letterhead of the Order Form;
"Date of Delivery"	means that date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form;
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Data Protection Legislation"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing

"Data Protection Impact Assessment"	of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deliver"	means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with Clause []. Delivered and Delivery shall be construed accordingly;
"Existing IPR"	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
"Expiry Date"	means the date for expiry of the Contract as set out in the Order Form;
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;

"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Goods"	means the goods to be supplied by the Supplier to the Buyer under the Contract;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government Data"	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680);
"New IPR"	all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
"Order Form"	means the letter from the Buyer to the Supplier printed above these terms and conditions;
"Party"	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the GDPR;

"Personal Data Breach"	has the meaning given to it in the GDPR;
"Processor"	has the meaning given to it in the GDPR;
"Purchase Order Number"	means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Services"	means the services to be supplied by the Supplier to the Buyer under the Contract;
"Specification"	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Term"	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause [] or terminated in accordance with the terms and conditions of the Contract;
"US-EU Privacy Shield Register"	a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: https://www.privacyshield.gov/list ;

"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Workers"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables;
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or bylaw made under that law; and
- 2.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

3. How the Contract works

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

4. What needs to be delivered

4.1 All Deliverables

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.
- (b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

4.2 Goods clauses

- (a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
- (d) Risk in the Goods transfers to the Buyer on delivery, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within three Working Days of delivery.
- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.
- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- (i) The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- (k) The Buyer can cancel any order or part order of Goods which has not been delivered. If the Buyer gives less than 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.
- (l) 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 don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- (m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or

installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its [sub-suppliers].

4.3 Services clauses

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality [and free from defects].
- (i) 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. Pricing and payments

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.2 All Charges:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice;
 - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
 - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
 - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).

- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

6. The Buyer's obligations to the Supplier

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
- (a) the Buyer cannot terminate the Contract under clause 11;
 - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
 - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
 - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
 - (b) demonstrates that the failure only happened because of the Buyer Cause;
 - (c) mitigated the impact of the Buyer Cause.

7. Record keeping and reporting

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action;
 - (c) provide a deadline for completing the corrective action.

- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
 - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

8. Supplier staff

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
 - (b) be vetted using Good Industry Practice and in accordance with the [instructions issued by the Buyer in the Order Form] [Staff Vetting Procedures];
 - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 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.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

9. Rights and protection

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
 - (b) the Contract is executed by its authorised representative;
 - (c) it is a legally valid and existing organisation incorporated in the place it was formed;

- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
 - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
 - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
- (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
 - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

10. Intellectual Property Rights (IPRs)

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier 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 and its sub-licensees to both:
- (a) receive and use the Deliverables;
 - (b) use the New IPR.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
- 10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party intellectual property rights;
 - (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

11. Ending the contract

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

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

11.3 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated clause 11.5(b) to 11.5(g) applies.

11.4 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
 - (i) there's a Supplier Insolvency Event;
 - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
 - (v) 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;
 - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
 - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(b) to 11.5(g) applies.

11.5 What happens if the Contract ends

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

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;
- (g) the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35] and any clauses which are expressly or by implication intended to continue.

11.6 When the Supplier can end the Contract

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 11.6(a):
 - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
 - (ii) 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;
 - (iii) clauses 11.5(d) to 11.5(g) apply.

11.7 Partially ending and suspending the Contract

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.7, but the Supplier may not either:
 - (i) reject the variation;
 - (ii) increase the Charges, except where the right to partial termination is under clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

12. How much you can be held responsible for

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
- (a) any indirect losses;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e) or 30.2(b).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

13. Obeying the law

- 13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
 - (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
 - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
 - (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.
- 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 Clauses 27 to 32

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

14. Data protection

14.1 The Buyer is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.

14.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.

14.3 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

14.4 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every six Months.

14.5 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 requirements specified [in writing] by the Buyer.

14.6 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.

14.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:

- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
- (b) restore the Government Data itself or using a third party.

14.8 The Supplier must pay each Party's reasonable costs of complying with clause 14.7 unless the Buyer is at fault.

14.9 Only the Buyer can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex 1 of the Order Form (*Authorised Processing*).

14.10 The Supplier must only process Personal Data if authorised to do so in the Annex to the Order Form (*Authorised Processing*) by the Buyer. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 of the Order Form.

14.11 The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:

- (a) a systematic description of the expected processing and its purpose;
- (b) the necessity and proportionality of the processing operations;
- (c) the risks to the rights and freedoms of Data Subjects;
- (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.

- 14.12 The Supplier must notify the Buyer immediately if it thinks the Buyer's instructions breach the Data Protection Legislation.
- 14.13 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Buyer.
- 14.14 If lawful to notify the Buyer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 14.15 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Supplier's duties under this clause 11;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
 - (c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the Buyer or as otherwise allowed by the Contract;
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 14.16 The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:
- (a) it has obtained prior written consent of the Buyer;
 - (b) the Buyer has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR);
 - (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
 - (d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - (e) where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help the Buyer meet its own obligations under Data Protection Legislation; and
 - (f) the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.
- 14.17 The Supplier must notify the Buyer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
 - (f) becomes aware of a Data Loss Event.

- 14.18 Any requirement to notify under clause 14.17 includes the provision of further information to the Buyer in stages as details become available.
- 14.19 The Supplier must promptly provide the Buyer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.17. This includes giving the Buyer:
- (a) full details and copies of the complaint, communication or request;
 - (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
 - (c) any Personal Data it holds in relation to a Data Subject on request;
 - (d) assistance that it requests following any Data Loss Event;
 - (e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.
- 14.20 The Supplier must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Buyer determines that the processing:
- (a) is not occasional;
 - (b) includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR;
 - (c) is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.21 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the Buyer their contact details.
- 14.22 Before allowing any Subprocessor to process any Personal Data, the Supplier must:
- (a) notify the Buyer in writing of the intended Subprocessor and processing;
 - (b) obtain the written consent of the Buyer;
 - (c) enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor;
 - (d) provide the Buyer with any information about the Subprocessor that the Buyer reasonably requires.
- 14.23 The Supplier remains fully liable for all acts or omissions of any Subprocessor.
- 14.24 At any time the Buyer can, with 30 Working Days notice to the Supplier, change this clause 14 to:
- (a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;
 - (b) ensure it complies with guidance issued by the Information Commissioner's Office.
- 14.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
- 14.26 The Supplier:
- (a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;

- (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- (d) 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;
- (e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 14 and any Data Protection Legislation.

15. What you must keep confidential

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
- (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

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

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
- (f) to its auditors or for the purposes of regulatory requirements;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis;
- (h) 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.

15.3 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 the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

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

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
- (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;

- (d) where requested by Parliament;
- (e) under clauses 5.7 and 16.

- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Information which is exempt from disclosure by clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

16. When you can share information

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- (a) comply with any Freedom of Information Act (FOIA) request;
 - (b) comply with any Environmental Information Regulations (EIR) request.
- 16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

17. Invalid parts of the contract

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

18. No other terms apply

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

19. Other people's rights in a contract

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

20. Circumstances beyond your control

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

- (a) provides written notice to the other Party;
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

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

20.3 Where a Party terminates under clause 20.2:

- (a) each party must cover its own losses;
- (b) clause 11.5(b) to 11.5(g) applies.

21. Relationships created by the contract

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

22. Giving up contract rights

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

23. Transferring responsibilities

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

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

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

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

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

23.6 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:

- (a) their name;
- (b) the scope of their appointment;
- (c) the duration of their appointment.

24. Changing the contract

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

25. How to communicate about the contract

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 25.2 Notices to the Buyer or Supplier must be sent to their address in the Order Form.
- 25.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Preventing fraud, bribery and corruption

- 26.1 The Supplier shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
 - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 26.3 If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
 - (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

27. Equality, diversity and human rights

- 27.1 The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
 - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

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

28. Health and safety

- 28.1 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable law regarding health and safety;
 - (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 28.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.

29. Environment

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

30. Tax

- 30.1 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. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 30.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Off Contract, the Supplier must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
 - (b) 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.
- 30.3 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:
- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

- (b) 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;
- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 30.2 or confirms that the Worker is not complying with those requirements;
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

31. Conflict of interest

- 31.1 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 between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
- 31.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 31.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

32. Reporting a breach of the contract

- 32.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 13.1, or clauses 26 to 31.
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 32.1.

33. Resolving disputes

- 33.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 33.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 33.3 to 33.5.
- 33.3 Unless the Buyer refers the dispute to arbitration using clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
 - (a) determine the dispute;
 - (b) grant interim remedies;
 - (c) grant any other provisional or protective relief.

- 33.4 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.
- 33.5 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 33.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 33.4.
- 33.6 The Supplier cannot suspend the performance of the Contract during any dispute.

34. Which law applies

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

APPENDIX A - VARIATION REQUEST FORM

Contract / Project Title:					
Contract / Project Ref No (FS /FSA No):					
Full Description of Variation Request: A full justification and impact assessment including any supplementary evidence must be provided. Any supporting information should be appended to this form.					
Area (s) Impacted: -					
Price <input type="checkbox"/>	Duration <input type="checkbox"/>	Price & Duration <input type="checkbox"/>	Scope of work <input type="checkbox"/>	Key Personnel <input type="checkbox"/>	Other <input type="checkbox"/>
Requester:					
Signature:					
Team / Organisation					
Date:					
Supplier Contact Details					
Supplier Name :					
Contact Name :					
Contact Address :					
:					
Telephone No :					
Email Address :					
FSA Use Only (Business Area)					
Amount Approved:					
Authorised By:- <input type="checkbox"/> Cost Centre Manager <input type="checkbox"/> Investment Board					
Signed :					
Date of Approval:					
Please submit this form to XXXXXXXXXX					

Procurement Use Only (confirm contract allows for requested variation)

Variation Request No:

Variation Request Approved by:

Date of Approval:

On full approval of this Request for Variation, Procurement will produce a Variation Form for agreement and approval by both parties to append to the Agreement / Contract.

APPENDIX B VARIATION FORM

PROJECT TITLE:

DATE:

VARIATION No:

BETWEEN:

The Food Standards Agency (hereinafter called “the Client”) & SUPPLIER (hereinafter called “the Supplier”)

1. The Contract is varied as follows:

Contract

x

2. Words and expressions in this Variation shall have the meanings given to them in the Framework.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Client

For: The Supplier

By:

By:

Full Name:

Full Name:

Position:

Title:

Date:

Date: