

Crown Commercial Service

Call off Contract Terms for Apprenticeships Training Dynamic Marketplace (RM6102)

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A. BACKGROUND

1. The Supplier is a participant on the Dynamic Marketplace Apprenticeship Training system DMP pursuant to the DMP Agreement.
2. The Customer has, through the DMP, selected the Supplier to provide goods and/or services required as detailed in the Contract Order Form.
3. The Supplier will be paid for their provision of services and/or goods via a drawdown from the Customer's ESFA apprenticeship levy funding wallet (or similar) and, for items which sit outside ESFA funding, by additional direct payment.
4. In addition to providing funding The ESFA is the body responsible for monitoring and regulating Apprenticeship Training Provider and End Point Assessor services. The ESFA issues rules and guidance for the use and drawdown of funding, which will change from time to time. Both the Supplier and the Customer intend to follow those ESFA rules and guidance in force from time to time as much as reasonably practicable.
5. Both the Customer and the Supplier have agreed that these terms and conditions, together with the Contract Order Form, will govern their relationship.

B. PRELIMINARIES**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Contract Schedule 1 (Definitions) or the relevant Contract Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Contract Schedule 1 (Definitions) or relevant Contract Schedule, it shall have the meaning given to it in the DMP Agreement. If no meaning is given to it in the DMP Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
 - a) the singular includes the plural and vice versa;
 - b) reference to a gender includes the other gender and the neuter;
 - c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";

- f) references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- g) references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Contract;
- h) references to “**Clauses**” and “**Contract Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Contract Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Contract Schedule in which these references appear; and
- i) the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.4 In the event of and only to the extent of any conflict between the Contract Order Form, the Contract Terms and the provisions of the DMP Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- a) The DMP Agreement;
- b) the Contract Order Form; and
- c) the Contract Terms.

1.5 Any permitted changes by the Customer to the Template Contract Terms and the Template Contract Order Form under Clause 5 (Call for Competition Procedure) of the DMP Agreement and DMP Schedule 5 (Call for Competition Procedure) prior to them becoming the Contract Terms and the Contract Order Form which comprise this Contract shall prevail over the DMP Agreement.

2. ESFA RULES AND GOVERNANCE

- 2.1 The Parties agree that, as far as reasonably practicable, they will both accommodate and adhere to the relevant ESFA (or any successor body) rules which may apply from time to time.
- 2.2 In the event that any term or condition within this Contract contradicts an ESFA rule, the Customer will not require the Supplier to do anything that may jeopardise the Supplier’s ESFA accreditation and registration.
- 2.3 Should any material contradiction between this contract and ESFA rules be identified the Parties agree to work together in good faith to resolve that contradiction.

3. DUE DILIGENCE

- 3.1 The Supplier acknowledges that:

- a) the Customer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- c) it has raised all relevant due diligence questions with the Customer before the Contract Commencement Date;
- d) it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone; and
- e) it shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) misinterpretation of the requirements of the Customer in the Contract Order Form or elsewhere in this Contract;
 - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (c) failure by the Supplier to undertake its own due diligence.

4. REPRESENTATIONS AND WARRANTIES

4.1 Each Party represents and warrants that:

- a) it has full capacity and authority to enter into and to perform this Contract;
- b) this Contract is executed by its duly authorised representative;
- c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
- d) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

4.2 The Supplier represents and warrants that:

- a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- b) it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals (including, but not limited to, being an authorised and registered ESFA approved provider at the Contract Commencement Date and throughout the Contract Period) to enter into this Contract;

- c) its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
- d) as at the Contract Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
- e) if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds, as at the Contract Commencement Date it has notified the Customer in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- f) it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Customer which are necessary for the performance of the Suppliers obligations under this Contract including the receipt of the Goods and/or Services by the Customer;
- g) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer;
- h) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- i) it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Suppliers assets or revenue; and
- j) for the Contract Period and for a period of twelve (12) Months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Customer which shall not be unreasonably withheld.

4.3 Each of the representations and warranties set out in Clauses 4.1 and 4.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.

- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 4.1 and 4.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 4.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier which constitutes a material Default.

C. DURATION OF CONTRACT

5. CONTRACT PERIOD

- 5.1 This Contract shall take effect on the Contract Commencement Date and the term of this Contract shall be the Contract Period.

D. CONTRACT PERFORMANCE

6. IMPLEMENTATION

- 6.1 The Supplier shall provide to the Customer the Goods and/or Services as identified in Annex 1 and/or 2 of Contract Schedule 2 to this Contract and in the Contract Order Form.
- 6.2 When providing the Goods and/ or Services, as required by Clause 6.1, the Supplier shall comply with the SLA standards detailed in contract schedule Annex 3 of Contract Schedule 2.

7. GOODS AND/ OR SERVICES

Provision of the Goods and/or Services

- 7.1 The Supplier acknowledges and agrees that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and/or Services and the performance of its obligations under this Contract.
- 7.2 The Supplier shall ensure that the Goods and/or Services:
 - a) comply in all respects with the description of the Goods and/or Services in Contract Schedule 2 (Goods and/or Services) or elsewhere in this Contract; and
 - b) are supplied in accordance with the provisions of this Contract.
- 7.3 The Supplier shall perform its obligations under this Contract in accordance with:
 - a) All applicable Law;
 - b) Good Industry Practice;
 - c) the Quality Standards;

- d) the Suppliers own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.3 a) to c),

7.4 The Supplier shall:

- a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Goods and/or Services in accordance with this Contract;
- b) obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Goods and/or Services;
- c) ensure that any Goods and/or Services recommended or otherwise specified by the Supplier for use by the Customer in conjunction with the Goods and/or Services shall meet the requirements of the Customer;
- d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Customer);
- e) ensure that the Goods and/or Services are fully compatible with any Customer Property or Customer Assets or otherwise used by the Supplier in connection with this Contract;
- f) minimise any disruption to the Sites and/or the Customer's operations when providing the Goods and/or Services;
- g) ensure that any Documentation and training provided by the Supplier to the Customer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- h) co-operate with any other suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Goods and/or Services to any other supplier and, on the Contract Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or Services (or any of them) to the Customer and/or to any Replacement Supplier;
- i) assign to the Customer, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Customer, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of Goods and/or Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Customer may notify from time to time to the Supplier;
- j) provide the Customer with such assistance as the Customer may reasonably require during the Contract Period in respect of the supply of the Goods and/or Services;
- k) deliver the Goods and/or Services in a proportionate and efficient manner; and
- l) gather, collate and provide such information and co-operation as the Customer may reasonably request for the purposes of ascertaining the Suppliers compliance with its obligations under this Contract.

- 7.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

8. SERVICES

General application

- 8.1 This Clause shall apply if any Services have been included in Annex 1 of Contract Schedule 2 (Goods and/or Services).

Time of Delivery of the Services

- 8.2 The Supplier shall provide the Services on the date(s) specified in the Contract Order Form (or elsewhere in this Contract).

Location and Manner of Delivery of the Services

- 8.3 Except where otherwise provided in this Contract, the Supplier shall provide the Services to the Customer through the Supplier Personnel at the Sites.
- 8.4 The Customer may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Customer Premises, the Customer may carry out such inspection and examination during normal business hours and on reasonable notice.

Undelivered Services

- 8.5 In the event that any of the Services are not delivered in accordance with Clauses 7 (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 and 8.4 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Customer, without prejudice to any other rights and remedies of the Customer howsoever arising, shall be entitled to withhold payment of any applicable Contract Charges which sit outside the applicable ESFA funding band for the Services that were not so delivered until such time as the undelivered services are delivered.
- 8.6 The Customer may, at its discretion and without prejudice to any other rights and remedies of the Customer howsoever arising, deem the failure to comply with Clauses 7 (Provision of the Goods and/or Services), 8.2 (Time of Delivery of the Services) and 8.3 and 8.4 (Location and Manner of Delivery of the Services) to be a material Default.

Obligation to Remedy of Default in the Supply of the Services

- 8.7 Subject to Clauses 22.10 and 22.21 (IPR Indemnity) and without prejudice to any other rights and remedies of the Customer howsoever arising (including under Clauses 8.6 (Undelivered Services) and 27 (Customer Remedies for Default)), the Supplier shall, where practicable:
- a) remedy any breach of its obligations in Clauses 8 and 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Customer or within such other time period as may be agreed with the Customer (taking into account the nature of the breach that has occurred);

- b) meet all the costs of, and incidental to, the performance of such remedial work

Continuing Obligation to Provide the Services

- 8.8 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:
- a) any withholding or deduction by the Customer and/or ESFA of any sum due to the Supplier pursuant to the exercise of a right of the Customer to such withholding or deduction under this Contract;
 - b) the existence of an unresolved Dispute; and/or
 - c) any failure by the Customer to pay any Contract Charges, unless the Supplier is entitled to terminate this Contract under Clauses 31.1 to 31.4 31.3 (Termination on Customer Cause for Failure to Pay) for failure by the Customer to pay undisputed Contract Charges.

9. QUALITY STANDARDS

- 9.1 The Supplier shall at all times during the Contract Period comply with the Quality Standards and maintain, where applicable, accreditation with the relevant Quality Standards' authorisation body.
- 9.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent Quality Standards which could affect the Suppliers provision, or the receipt by the Customer, of the Goods and/or Services. A proposed adoption of any such new or emergent Quality standard, or changes to existing Quality Standards (including any specified in the Contract Order Form), shall be made by the Supplier by way of notice which the Supplier will consider before the supplier decides whether the Contract should be varied and how that contract variation should be documented.
- 9.3 Where a new or emergent Quality Standard is to be developed or introduced by the Customer, the Supplier shall be responsible for ensuring that the potential impact on the Suppliers provision, or the Customer's receipt of the Goods and/or Services is explained to the Customer (within a reasonable timeframe), prior to the implementation of the new or emergent Quality Standard.
- 9.4 Where Quality Standards referenced conflict with each other or with best professional or industry practice adopted after the Contract Commencement Date, then the later Quality Standard or best practice shall be adopted by the Supplier. Any such alteration to any Quality Standard or Quality Standards shall require Approval (and the written consent of the Customer where the relevant Standard or Standards is/are included in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators) and shall be implemented within an agreed timescale.
- 9.5 Where a Quality Standard, policy or document is referred to by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Customer and the Parties shall agree the impact of such change.

10. DISRUPTION

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Suppliers ability at any time to perform its obligations under this Contract.
- 10.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Contract.
- 10.4 If the Suppliers proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may terminate this Contract for material Default.
- 10.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely due to a Customer Cause, then subject to Clause 11.1 (Supplier Notification of Customer Cause), an appropriate allowance by way of an extension of time will be Approved by the Customer.

11. SUPPLIER NOTIFICATION OF CUSTOMER CAUSE

- 11.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Customer in respect of a specific Customer Cause (including the notice requirements under Clause 31.1 (Termination on Customer Cause for Failure to Pay)), the Supplier shall:
 - a) notify the Customer as soon as reasonably practicable ((and in any event within two (2) Working Days of the Supplier becoming aware)) that a Customer Cause has occurred or is reasonably likely to occur, giving details of:
 - i the Customer Cause and its effect, or likely effect, on the Supplier ability to meet its obligations under this Contract; and
 - ii any steps which the Customer can take to eliminate or mitigate the consequences and impact of such Customer Cause; and
 - iii use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Customer Cause, including any Losses that the Supplier may incur and the duration and consequences of any delay or anticipated delay.

E. CONTRACT GOVERNANCE**12. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 12.1 The Supplier shall keep and maintain for seven (7) years after the Contract Expiry Date (or as long a period as may be agreed between the Parties or required by the in force ESFA rules), full and accurate records and accounts

of the operation of this Contract including the Goods and/or Services provided under it, any Sub-Contracts and the amounts paid by the Customer.

12.2 The Supplier shall:

- a) keep the records and accounts referred to in Clause 12.1 in accordance with Good Industry Practice and Law; and
- b) afford any Auditor access to the records and accounts referred to in Clause 12.1 at the Suppliers premises and/or provide records and accounts (including copies of the Suppliers published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 12.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Suppliers obligations under this Contract including in order to:
 - (a) verify the accuracy of the Contract Charges and any other amounts payable by the Customer under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub Contractors and any third party suppliers) in connection with the provision of the Goods and/or Services;
 - (c) verify the Open Book Data;
 - (d) verify the Suppliers and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, and/or any Sub-Contractors or their ability to perform the Goods and/or Services;
 - (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;

- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- (k) verify the accuracy and completeness of any information delivered or required by this Contract;
- (l) review the Suppliers quality management systems (including any quality manuals and procedures);
- (m) review the Suppliers compliance with the Standards;
- (n) inspect the Customer Assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer Assets are secure and that any register of assets is up to date; and/or
- (o) review the integrity, confidentiality and security of the Customer Data.

12.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.

12.4 Subject to the Suppliers rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

- a) all reasonable information requested by the Customer within the scope of the audit;
- b) reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and/or Services; and
- c) access to the Supplier Personnel.

12.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 12, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

13. CHANGE

Legislative Change

- 13.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:
- a) General Change in Law;
 - b) Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the Contract Commencement Date.

- 13.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 13.1b), the Supplier shall:
- a) notify the Customer as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether, in their opinion a contract variation is required to the provision of the Goods and/or Services, the Contract Charges or this Contract ; and
 - (ii) whether any relief from compliance with the Suppliers obligations is required; and
 - b) provide to the Customer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Contract Charges.

Variation Process

- 13.3 Subject to the provisions of this Clause 13.3 and Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing), either Party may request a variation to this Call Off Contract provided that such variation does not amount to a material change of this Call Off Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**"
- 13.4 A Party may request a Variation by completing, signing and sending the **Variation Form** to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 13.5 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

F. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

14. CONTRACT CHARGES AND PAYMENT

Contract Charges

- 14.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Goods and/or Services, the Customer shall pay the undisputed Contract Charges in accordance with the pricing and payment profile and the invoicing procedure in Contract Schedule 3 (Contract Charges, Payment and Invoicing).
- 14.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under, 12(Records, Audit Access and Open Book Data), 23.23 to 23.24 (Freedom of Information) and 23.25 to 23.39 (Protection of Personal Data).

- 14.3 If the Customer fails to pay undisputed Contract Charges, which are in excess of and covered by ESFA funding, properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 14.4 The Customer is not responsible for any shortfall in fees or any lost revenue suffered by the Supplier, in the event that an apprentice student leaves their apprenticeship course early and uncompleted. In such an event ESFA funding will cease as soon as possible and any obligation owed by the Customer to pay additional fees directly will end.

VAT

- 14.5 The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a Valid Invoice.
- 14.6 Where VAT is applicable, the Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Suppliers failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract
- 14.7 Any amounts due under Clauses 14.5 and 14.6 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

Retention and Set Off

- 14.8 The Customer may retain or set off any amount, in excess of ESFA funding, owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Customer.
- 14.9 If the Customer wishes to exercise its right pursuant to Clause 14.8 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Customer's reasons for retaining or setting off the relevant Contract Charges.
- 14.10 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

Foreign Currency

- 14.11 Any requirement of Law to account for the Goods and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 14.12 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 14.11 by the Supplier.

Income Tax and National Insurance Contributions

14.13 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and/or Services by the Supplier or any Supplier Personnel.

14.14 In the event that any one of the Supplier Personnel is a Worker as defined in Contract Schedule 1(Definitions) who receives consideration relating to the Goods and/or Services, then, in addition to its obligations under Clause 14.13, the Supplier shall ensure that its contract with the Worker contains the following requirements:

- a) that the Customer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 14.13, or why those requirements do not apply to it. In such case, the Customer may specify the information which the Worker must provide and the period within which that information must be provided;
- b) that the Worker's contract may be terminated at the Customer's request if:
 - (i) the Worker fails to provide the information requested by the Customer within the time specified by the Customer under Clause 14.14a); and/or
 - (ii) the Worker provides information which the Customer considers is inadequate to demonstrate how the Worker complies with Clause 14.13 or confirms that the Worker is not complying with those requirements; and
 - (iii) that the Customer may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible

15. PROMOTING TAX COMPLIANCE

15.1 This Clause 15 shall apply if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds during the Contract Period.

15.2 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- a) notify the Customer in writing of such fact within five (5) Working Days of its occurrence; and
- b) promptly provide to the Customer:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Noncompliance as the Customer may reasonably require.

In the event that the Supplier fails to comply with this Clause 15 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable, then the Customer reserves the right to terminate this Contract for material Default.

G. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

16. SUPPLIER PERSONNEL

Supplier Personnel

- 16.1 The Supplier shall:
- a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
 - b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Goods and/or Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
 - (iii) obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and
 - (iv) comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the security requirements set out in Contract Schedule 4 (Security);
 - c) subject to Contract Schedule 5 (Staff Transfer) ;, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;

- d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
 - e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - h) procure that the Supplier Personnel shall vacate the Customer Premises immediately upon the Contract Expiry Date.
- 16.2 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Goods and/or Services of the relevant person(s).
- 16.3 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

Relevant Convictions

- 16.4 For each member of Supplier Personnel who, in providing the Goods and/or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
- a) carry out a check with the records held by the Department for Education (DfE);
 - b) conduct thorough questioning regarding any Relevant Convictions; and
 - c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS), and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Goods and/or Services any person who has a Relevant Conviction or an inappropriate record.

17. STAFF TRANSFER

- 17.1 This Clause shall not apply if there are Goods but no Services Under this Contract.
- 17.2 Where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Contract Schedule 5 (Staff Transfer) shall apply as follows:

- a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Contract Schedule 5 (Staff Transfer) shall apply;
 - b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Contract Schedule 5 (Staff Transfer) shall apply;
 - c) where the Relevant Transfer involves the transfer of Customer Employees and Transferring Former Supplier Employees, Parts A and B of Contract Schedule 5 (Staff Transfer) shall apply; and
 - d) Part C of Contract Schedule 5 (Staff Transfer) shall not apply;
- 17.3 Where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Contract Schedule 5 (Staff Transfer) shall apply and Parts A and B of Contract Schedule 5 (Staff Transfer) shall not apply.
- 17.4 Part D of Contract Schedule 5 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.
- 17.5 The Supplier shall both during and after the Contract Period indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

18. SUPPLY CHAIN RIGHTS AND PROTECTION

Appointment of Sub-Contractors

- 18.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- a) manage any Sub-Contractors in accordance with Good Industry Practice;
 - b) comply with its obligations under this Contract in the Delivery of the Goods and/or Services; and
 - c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 18.2 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall notify the Customer and provide the Customer with:
- a) the proposed Sub-Contractor's name, registered office and company registration number;
 - b) the scope of any Goods and/or Services to be provided by the proposed Sub-Contractor; and
 - c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.

- 18.3 If requested by the Customer within ten (10) Working Days of receipt of the Suppliers notice issued pursuant to Clause 18.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Customer.
- 18.4 The Customer may, within ten (10) Working Days of receipt of the Suppliers notice issued pursuant to Clause 18.2 (or, if later, receipt of any further information requested pursuant to Clause 18.3), object to the appointment of the relevant Sub-Contractor if they consider that:
- a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Customer under this Contract
 - b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - c) the proposed Sub-Contractor employs unfit persons, in which case, the Supplier shall not proceed with the proposed appointment.
- 18.5 The Supplier may proceed with the proposed appointment if
- (a) the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Suppliers notice issued pursuant to Clause 18.2; and
 - (ii) any further information requested by the Customer pursuant to Clause 18.3; and
 - (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer in accordance with Clause 18.7 to 18.9 (Appointment of Key Sub-Contractors).
- 18.6 The Supplier expressly agrees that it shall not charge, or pass on charges in any way, for the management and supervision of any Sub-Contractor.

Appointment of Key Sub-Contractors

- 18.7 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in DMP Schedule 7 (Key Sub-Contractors).
- 18.8 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
- a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;

- b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers; and/or
 - c) the proposed Key Sub-Contractor employs unfit persons.
- 18.9 Except where the Authority and the Customer have given their prior written consent under Clause 18.7, the Supplier shall ensure that each Key Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
 - (b) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
 - (c) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
 - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 23.1 (Security Requirements), 23.2 to 23.9 (Protection of Customer Data) and 23.25 to 23.39 (Data Protection);
 - (ii) FOIA requirements set out in Clause 23.23 to 23.24 (Freedom of Information);
 - (iii) the keeping of records in respect of the Goods and/or Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
 - (iv) the conduct of audits set out in Clause 12 (Records, Audit Access & Open Book Data);
 - i. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clauses 30 (Customer Termination Rights), 32 (Termination by Either Party) and 34 (Consequences of Expiry or Termination) of this Contract;
 - ii. a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
 - iii. a provision, where a provision in Contract Schedule 5 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

Supply Chain Protection

- 18.10 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
 - (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and
 - (d) conferring a right to the Customer to publish the Suppliers compliance with its obligation to pay undisputed invoices within the specified payment period.
- 18.11 The Supplier shall:
- a) pay undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
 - b) Provide a summary of its compliance with this Clause 18.11a), such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.
- 18.12 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 18.13 Notwithstanding any provision of Clauses 23.10 to 23.18 (Confidentiality) and 24 (Publicity and Branding) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-Contracts

- 18.14 The Customer may require the Supplier to terminate:
- a) a Sub-Contract where:
 - i. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 30 (Customer Termination Rights) except Clause 30.9 (Termination Without Cause); and/or
 - ii. relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise;
 - b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

- (i) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (ii) the Customer has not served its notice of objection within six (6) Months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

Retention of Legal Obligations

- 18.15 Notwithstanding the Suppliers right to Sub-Contract pursuant to Clause 18 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

H. PROPERTY MATTERS

19. CUSTOMER PREMISES

Licence to occupy Customer Premises

- 19.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract.
- 19.2 The Supplier shall limit access to the Customer Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Customer Premises as the Customer may reasonably request.
- 19.3 Save in relation to such actions identified by the Supplier in accordance with Clause 3 (Due Diligence) and set out in the Contract Order Form (or elsewhere in this Contract), should the Supplier require modifications to the Customer Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Suppliers expense. The Customer shall undertake any modification work which it approves pursuant to this Clause 19.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 19.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Customer Premises and conduct of personnel at the Customer Premises as determined by the Customer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein
- 19.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the

Customer retains the right at any time to use any Customer Premises in any manner it sees fit.

Security of Customer Premises

- 19.6 The Customer shall be responsible for maintaining the security of the Customer Premises. The Supplier shall comply with any reasonable security requirements of the Customer while on the Customer Premises.
- 19.7 The Customer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

20. CUSTOMER PROPERTY

- 20.1 Where the Customer issues Customer Property free of charge to the Supplier such Customer Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Customer Property.
- 20.2 The Supplier shall not in any circumstances have a lien or any other interest on the Customer Property and at all times the Supplier shall possess the Customer Property as fiduciary agent and bailee of the Customer.
- 20.3 The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Customer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Customer Property separately and securely and ensure that it is clearly identifiable as belonging to the Customer.
- 20.4 The Customer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 20.5 The Supplier shall maintain the Customer Property in good order and condition (excluding fair wear and tear) and shall use the Customer Property solely in connection with this Contract and for no other purpose without Approval.
- 20.6 The Supplier shall ensure the security of all the Customer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Goods and/or Services, in accordance with the Customer's Security Policy and the Customer's reasonable security requirements from time to time.
- 20.7 The Supplier shall be liable for all loss of, or damage to the Customer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Customer Cause. The Supplier shall inform the Customer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Customer Property.

21. SUPPLIER EQUIPMENT

- 21.1 Unless otherwise stated in the Contract Order Form (or elsewhere in this Contract), the Supplier shall provide all the Supplier Equipment necessary for the provision of the Goods and/or Services.

- 21.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Customer Premises without obtaining Approval.
- 21.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Customer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Contract Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Customer Premises, including the cost of packing, carriage and making good the Sites and/or the Customer Premises following removal.
- 21.4 All the Suppliers property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for loss of or damage to any of the Suppliers property located on Customer Premises which is due to the negligent act or omission of the Customer.
- 21.5 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Goods and/or Services in accordance with this Contract.
- 21.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Customer Premises in a safe, serviceable and clean condition.
- 21.7 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - a) remove from the Customer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Contract; and
 - b) replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

I. INTELLECTUAL PROPERTY AND INFORMATION

22. INTELLECTUAL PROPERTY RIGHTS

Allocation of title to IPR

- 22.1 Save as expressly granted elsewhere under this Contract:
 - a) the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
 - (i) the Supplier Background IPR;
 - (ii) the Third Party IPR; and
 - (iii) the Project Specific IPR.
 - b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the:
 - i. Customer Background IPR; and
 - ii. Customer Data.
- 22.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 22.1,

22.2 and 22.3, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

- 22.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

Licence granted by the Supplier: Project Specific IPR

- 22.4 The Supplier hereby grants to the Customer, or shall procure the direct grant to the Customer of, a perpetual, royalty-free, irrevocable, nonexclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

Licence granted by the Supplier: Supplier Background IPR

- 22.5 The Supplier hereby grants to the Customer a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function.
- 22.6 At any time during the Contract Period or following the Contract Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 22.5 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Customer Cause which constitutes a material breach of the terms of 22.5 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Customer written notice specifying the breach and requiring its remedy.
- 22.7 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 22.6, the Customer shall:
- a) immediately cease all use of the Supplier Background IPR;
 - b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) Months of the termination of the licence, the Customer may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
 - c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Customer) from any computer, word processor, voicemail system or any other device containing such Supplier Background IPR.

Customer's right to sub-license

- 22.8 The Customer shall be freely entitled to sub-license the rights granted to it pursuant to Clause 22.4 (Licence granted by the Supplier: Project Specific IPR).

- 22.9 The Customer may sub-license:
- (a) the rights granted under Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Customer; and
 - (ii) the sub-licence only authorises the third party to use the rights licensed in Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) for purposes relating to the Goods and/or Services (or substantially equivalent goods and/or services) or for any purpose relating to the exercise of the Customer's (or, if the Customer is a Central Government Body, any other Central Government Body's) business or function; and
 - (b) the rights granted under Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Customer.

Customer's right to assign/novate licences

- 22.10 The Customer shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 22.4 (Licence granted by the Supplier: Project Specific IPR).
- 22.11 The Customer may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) to:
- a) a Central Government Body; or
 - b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Customer.
- 22.12 Where the Customer is a Central Government Body, any change in the legal status of the Customer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 22.4 (Licence granted by the Supplier: Project Specific IPR) and/or Clause 22.5 (Licences granted by the Supplier: Supplier Background IPR). If the Customer ceases to be a Central Government Body, the successor body to the Customer shall still be entitled to the benefit of the licences granted in Clause 22.4 (Licence granted by the Supplier: Project Specific IPR) and Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR).
- 22.13 If a licence granted in Clause 22.4 (Licence granted by the Supplier: Project Specific IPR) and/or Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) is novated under Clauses 22.10 and/or 22.11 or there is a change of the Customer's status pursuant to Clause 22.12 (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Customer.

Third Party IPR

- 22.14 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Customer on terms at least equivalent to those set out in Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) and Clause 22.10 (Customer's right to assign/novate licences). If the Supplier cannot obtain for the Customer a licence materially in accordance with the licence terms set out in Clause 22.5 (Licences granted by the Supplier: Supplier Background IPR) and Clause 22.11 (Customer's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:
- (a) notify the Customer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
 - (b) only use such Third Party IPR if the Customer Approves the terms of the licence from the relevant third party.

Licence granted by the Customer

- 22.15 The Customer hereby grants to the Supplier a royalty-free, nonexclusive, non-transferable licence during the Contract Period to use the Customer Background IPR and the Customer Data solely to the extent necessary for providing the Goods and/or Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 23.10 to 23.18 (Confidentiality); and
 - b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Customer.

Termination of licenses

- 22.16 Subject to Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR), all licences granted pursuant to Clause 22 (Intellectual Property Rights) (other than those granted pursuant to Clause 22.14 (Third Party IPR) and 22.15 (Licence granted by the Customer)) shall survive the Contract Expiry Date.
- 22.17 The Supplier shall, if requested by the Customer as a result of a contract termination in accordance with Clause 30, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 22.5 (Licence granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 22.18 The licence granted pursuant to Clause 22.15 (Licence granted by the Customer) and any sub-licence granted by the Supplier in accordance with Clause 22.15 (Licence granted by the Customer) shall terminate automatically on the Contract Expiry Date and the Supplier shall:
- a) immediately cease all use of the Customer Background IPR and the Customer Data (as the case may be);

- b) at the discretion of the Customer, return or destroy documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data, provided that if the Customer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Customer Background IPR and the Customer Data (as the case may be); and
- c) ensure, so far as reasonably practicable, that any Customer Background IPR and Customer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Customer Background IPR and/or Customer Data.

IPR Indemnity

- 22.19 The Supplier shall, during and after the Contract Period, on written demand, indemnify the Customer against all Losses incurred by, awarded against, or agreed to be paid by the Customer (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 22.20 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- a) procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim; or
 - b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
 - (iii) there is no additional cost to the Customer; and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Goods and/or Services.
- 22.21 If the Supplier elects to procure a licence in accordance with Clause 22.20a) or to modify or replace an item pursuant to Clause 22.20b), but this has not avoided or resolved the IPR Claim, then:
- (i) the Customer may terminate this Contract by written notice with immediate effect; and
 - (ii) without prejudice to the indemnity set out in Clause 22.19, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute goods and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

23. SECURITY AND PROTECTION OF INFORMATION

Security Requirements

- 23.1 The Supplier shall comply with the requirements of Contract Schedule 4 (Security) including the Security Management Plan (if any).

Protection of Customer Data

- 23.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 23.3 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise Approved by the Customer.
- 23.4 To the extent that the Customer Data is held and/or Processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format (if any) specified by the Customer in the Contract Order Form and, in any event, as specified by the Customer from time to time in writing.
- 23.5 The Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 23.6 The Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location in accordance with any business continuity plan or otherwise. The Supplier shall ensure that such back-ups are available to the Customer (or to such other person as the Customer may direct) at all times upon request and are delivered to the Customer at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 23.7 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any)
- 23.8 If at any time the Supplier suspects or has reason to believe that the Customer Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.
- 23.9 If the Customer Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Customer may:
 - a) require the Supplier (at the Suppliers expense) to restore or procure the restoration of Customer Data as required by the Customer, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Customer's notice; and/or
 - b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so as required by the Customer.

Confidentiality

- 23.10 For the purposes of Clauses 23.10 to 23.18, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 23.11 Except to the extent set out in Clauses 23.10 to 23.18 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
 - a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon

- the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
 - c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract ; and
 - d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 23.12 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 23.23 to 23.24 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
 - b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Customer arising out of or in connection with this Contract ;
 - (ii) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Goods and/or Services provided under this Contract ; or
 - (iii) the conduct of a Central Government Body review in respect of this Contract; or
 - c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 23.13 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 23.14 Subject to Clause 23.11, the Supplier may only disclose the Confidential Information of the Customer on a confidential basis to:
- a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable performance of the Suppliers obligations under this Contract ; and
 - b) its professional advisers for the purposes of obtaining advice in relation to this Contract.

- 23.15 Where the Supplier discloses Confidential Information of the Customer pursuant to Clause 23.14, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 23.16 The Customer may disclose the Confidential Information of the Supplier:
- a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 23.16d) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - e) on a confidential basis for the purpose of the exercise of its rights under this Contract ; or
 - f) to a proposed transferee, assignee or novatee of, or successor in title to the Customer, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under Clause 23.10 to 23.18.
- 23.17 Nothing in Clause 23.10 to 23.18 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 23.18 In the event that the Supplier fails to comply with Clauses 23.11 to 23.12, the Customer reserves the right to terminate this Contract for material Default.

Transparency

- 23.19 The Supplier recognises that the Customer is subject to PPN 01/17 (Updates to transparency principles v1.1 <https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>) The Supplier shall comply with the provisions of Contract Schedule 9 in order to assist the Customer with its compliance with its obligations under that PPN.
- 23.20 Without prejudice to the Supplier's reporting requirements set out elsewhere, within three (3) Months of the Commencement Date the Supplier shall submit to the Customer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Contract Schedule 9.
- 23.21 If the Customer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection,

taking account of any recommendations for revision and improvement to the report provided by the Customer. If the Parties fail to agree on a draft Transparency Report the Customer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.

- 23.22 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in Contract Schedule 9.

Freedom of Information

- 23.23 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its Information disclosure obligations under the FOIA and EIRs;
 - b) transfer to the Customer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 23.24 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

Data Protection

- 23.25 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor unless otherwise specified in Contract Schedule 7. The only processing that the Processor is authorised to do is listed in Contract Schedule 7 by the Controller and may not be determined by the Processor.
- 23.26 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 23.27 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to

commencing any processing. Such assistance may, at the discretion of the Controller, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23.28 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with Contract Schedule 7, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- c) ensure that :
 - i. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 7);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - 2. the Data Subject has enforceable rights and effective legal remedies;
 - 3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - 4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 23.29 Subject to Clause 23.30, the Processor shall notify the Controller immediately if it:
- a) receives a Data Subject Request (or purported Data Subject 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 Agreement;
 - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- 23.30 The Processor's obligation to notify under Clause 23.29 shall include the provision of further information to the Controller in phases, as details become available.
- 23.31 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.29 (and insofar as possible within the

timescales reasonably required by the Controller) including by promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Controller following any Data Loss Event;
- e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

23.32 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a) the Controller determines that the processing is not occasional;
- b) the Controller determines the processing 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; or
- c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

23.33 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

23.34 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

23.35 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- a) notify the Controller in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Controller;
- c) enter into a written agreement with the Sub-processor which give effect to the terms set out in clauses 23.25 to 23.39 (Data Protection) such that they apply to the Sub-processor; and
- d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

23.36 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

- 23.37 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 23.38 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.39 Where the Parties include two or more Joint Controllers as identified in Contract Schedule 7 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Contract Schedule 8 in replacement of Clauses 23.25 to 23.39 for the Personal Data under Joint Control.

24. PUBLICITY AND BRANDING

- 24.1 The Supplier shall not, without Approval (the decision of the Customer to Approve or not shall not be unreasonably withheld or delayed):
- a) make any press announcements or publicise this Contract in any way; or
 - b) use the Customer's name or brand in any promotion or marketing or announcement of orders,
- 24.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Goods and/or Services and Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

J. LIABILITY AND INSURANCE

25. LIABILITY

Unlimited Liability

- 25.1 Neither Party excludes or limits its liability for:
- a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - b) bribery or Fraud by it or its employees;
 - c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - d) any liability to the extent it cannot be excluded or limited by Law.

- 25.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clauses 22.19 to 22.21 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

Financial Limits

- 25.3 Subject to Clauses 25.1 to 25.2 (Unlimited Liability), the Suppliers total aggregate liability: in respect of all Losses incurred by the Customer under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed: the higher of five million pounds (£5,000,000) or a sum equal to one hundred and fifty per cent (150%) of the Contract Charges.
- 25.4 Subject to Clauses 25.1 and 25.2 (Unlimited Liability) and 25.3 and 25.4 (Financial Limits) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Customer's total aggregate liability in respect of all Losses as a result of Customer Causes shall be limited to:
- a) in relation to any Customer Causes occurring from the Contract Commencement Date to the end of the first Contract Year, a sum equal to Contract Charges;

Non-recoverable Losses

- 25.5 Subject to Clause 25.1 and 25.2 (Unlimited Liability) neither Party shall be liable to the other Party for any:
- a) indirect, special or consequential Loss;
 - b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

Recoverable Losses

- 25.6 Subject to Clause 25.3 and 25.4 (Financial Limits), and notwithstanding Clause 25.5 (Non-recoverable Losses), the Supplier acknowledges that the Customer may, amongst other things, recover from the Supplier the following Losses incurred by the Customer to the extent that they arise as a result of a Default by the Supplier:
- a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
 - b) any wasted expenditure or charges;
 - c) the additional cost of procuring Replacement Goods and/or Services for the remainder of the Contract Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Contract;
 - d) any compensation or interest paid to a third party by the Customer; and
 - e) any fine, penalty or costs incurred by the Customer pursuant to Law.

Miscellaneous

- 25.7 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 25.8 Any Deductions shall not be taken into consideration when calculating the Suppliers liability under Clause 25.3 to 25.4 (Financial Limits).
- 25.9 Subject to any rights of the Customer under this Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Contract shall be dealt with in accordance with the provisions of DMP Schedule 20 (Conduct of Claims).

26. INSURANCE

- 26.1 This Clause 26 will only apply where specified in the Contract Order Form or elsewhere in this Contract.
- 26.2 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (Insurance) of the DMP Agreement, the Supplier shall effect and maintain such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the DMP Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.
- 26.3 Without limitation to the generality of Clause 26.2 the Supplier shall ensure that it maintains the policy or policies of insurance as stipulated in the Contract Order Form.
- 26.4 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clause 26 for six (6) years after the Contract Expiry Date.
- 26.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in Clause 26 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 26.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under Clause 26 the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.
- 26.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Contract.
- 26.8 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

K. REMEDIES AND RELIEF

27. CUSTOMER REMEDIES FOR DEFAULT

Remedies

- 27.1 Without prejudice to any other right or remedy of the Customer howsoever arising, if the Supplier commits any Default of this Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
- a) at the Customer's option, give the Supplier the opportunity (at the Suppliers expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Customer's instructions;
 - b) carry out, at the Suppliers expense, any work necessary to make the provision of the Goods and/or Services comply with this Contract;
 - c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Contract (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Goods and/or Services;
 - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Goods and/or Services only (whereupon the relevant provisions of Clause 33 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;
- 27.2 Where the Customer exercises any of its step-in rights under Clauses 27.1c)(ii) or 27.1c)(iii), the Customer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Goods and/or Replacement Goods and/or Services.

Rectification Plan Process

27.3 Where the Customer has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 27.1c)(i):

- a) the Supplier shall submit a draft Rectification Plan to the Customer for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of Customer's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Customer's request for a draft Rectification Plan.
- b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

27.4 The Supplier shall promptly provide to the Customer any further documentation that the Customer requires to assess the Suppliers root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Contract Schedule 6 (Dispute Resolution Procedure).

27.5 The Customer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- a) is insufficiently detailed to be capable of proper evaluation;
- b) will take too long to complete;
- c) will not prevent reoccurrence of the Default; and/or
- d) will rectify the Default but in a manner which is unacceptable to the Customer.

27.6 The Customer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Customer rejects the draft Rectification Plan, the Customer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Customer for review within five (5) Working Days (or such other period as agreed between the Parties) of the Customer's notice rejecting the first draft.

27.7 If the Customer consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28. SUPPLIER RELIEF DUE TO CUSTOMER CAUSE

28.1 If the Supplier has failed to:

- a) provide the Goods and/or Services in accordance with the Service Levels; or
- b) comply with its obligations under this Contract,

(each a “Supplier Non-Performance”), and can demonstrate that the Supplier Non-Performance would not have occurred but for a Customer Cause, then (subject to the Supplier fulfilling its obligations in Clause 11 (Supplier Notification of Customer Cause)):

- i. the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Customer Cause;
- ii. the Customer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 30 (Customer Termination Rights) except Clause 30.9 (Termination Without Cause);

28.2 Where the Supplier Non-Performance constitutes a Service Level Failure the following will apply:

- a) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Goods and/or Services affected by the Customer Cause, in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Customer Cause.

28.3 In order to claim any of the rights and/or relief referred to in Clauses 28.1 and 28.2, the Supplier shall:

- a) comply with its obligations under Clause 11 (Notification of Customer Cause); and
- b) within ten (10) Working Days of becoming aware that a Customer Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Customer notice (a “**Relief Notice**”) setting out details of:
 - (a) the Supplier Non-Performance;
 - (b) the Customer Cause and its effect on the Suppliers ability to meet its obligations under this Contract; and
 - (c) the relief claimed by the Supplier.

28.4 Following the receipt of a Relief Notice, the Customer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Customer Cause and whether it agrees with the Suppliers assessment set out in the Relief Notice as to the effect of the relevant Customer Cause and its entitlement to relief, consulting with the Supplier where necessary.

28.5 Without prejudice to Clause 8.8 (Continuing obligation to provide the Services) if a Dispute arises as to:

- a) whether a Supplier Non-Performance would not have occurred but for a Customer Cause; and/or

- b) the nature and/or extent of the relief claimed by the Supplier, either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

29. FORCE MAJEURE

- 29.1 Subject to the remainder of Clause 29, a Party may claim relief under Clause 29 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 29.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 29.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 29 to the extent that consequences of the relevant Force Majeure Event:
 - i. are capable of being mitigated by any of the provision of any Goods and/or Services, but the Supplier has failed to do so; and/or
 - ii. should have been foreseen and prevented or avoided by a prudent provider of goods and/or services similar to the Goods and/or Services, operating to the standards required by this Contract.
- 29.4 Subject to Clause 29.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Goods and/or Services affected by the Force Majeure Event.
- 29.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.6 Where, as a result of a Force Majeure Event, an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Goods and/or Services is materially

- impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - b) the Supplier shall not be liable for any Default and the Customer shall not be liable for any Customer Cause arising as a result of such failure;
- 29.7 Where, as a result of a Force Majeure Event the Supplier fails to perform its obligations in accordance with this Contract:
- a) the Customer shall not be entitled: during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 27.1b) and 27.1c) (Customer Remedies for Default) as a result of such failure
 - b) the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Goods and/or Services (or part of the Goods and/or Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 29.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 29.9 Relief from liability for the Affected Party under Clause 29 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 29.8.

L. TERMINATION AND EXIT MANAGEMENT

30. CUSTOMER TERMINATION RIGHTS

Termination on Material Default

- 30.1 The Customer may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- a) the representation and warranty given by the Supplier pursuant to Clause 4.2e) (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Customer are acceptable;
 - b) as a result of any Defaults, the Customer incurs Losses in any Contract Year which exceed 80% (unless stated differently in the Contract Order Form) of the value of the Suppliers aggregate annual liability limit for that Contract Year as set out in Clauses 25.3 and 25.4 (Liability) ;
 - c) the Customer expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 10.4 (Disruption), 12.5 (Records, Audit Access and Open Book Data), 15 (Promoting Tax Compliance), 23.18 (Confidentiality), 39.6b) (Prevention of Fraud and Bribery),

Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Contract Schedule 5 (Staff Transfer) ;

- d) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Customer, capable of remedy; and/or
- e) the Supplier commits a Default, including a material Default, which in the opinion of the Customer is remediable but has not remedied such Default to the satisfaction of the Customer in accordance with the Rectification Plan Process.
- f) the Supplier has been struck off the current and in force ESFA register.

30.2 For the purpose of Clause 30.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

Termination in Relation to Financial Standing

- 30.3 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Customer there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
- a) adversely impacts on the Suppliers ability to supply the Goods and/or Services under this Contract ; or
 - b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Contract.

Termination on Insolvency

- 30.4 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

Termination on Change of Control

- 30.5 The Supplier shall notify the Customer immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 30.6 The Supplier shall ensure that any notification made pursuant to Clause 30.5 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 30.7 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) Months of:
- a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - b) where no notification has been made, the date that the Customer becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to

terminate where an Approval was granted prior to the Change of Control

Termination for breach of Regulations

- 30.8 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

Termination Without Cause

- 30.9 The Customer shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least ninety (90) Working Days written notice (unless stated differently in the Contract Order Form).

Termination in Relation to DMP Agreement

- 30.10 The Customer may terminate this Contract by issuing a Termination Notice to the Supplier if the DMP Agreement is terminated for any reason whatsoever.

31. SUPPLIER TERMINATION RIGHTS

Termination on Customer Cause for Failure to Pay

- 31.1 The Supplier may, by issuing a Termination Notice to the Customer, terminate this Contract if the Customer fails to pay an undisputed sum and/or directs ESFA not to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds an amount equal to one month's average Contract Charges (unless a different amount has been specified in the Contract Order Form), for the purposes of this Clause 31.1 (the "**Undisputed Sums Limit**"), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Customer of a written notice of non-payment from the Supplier specifying:
- a) the Customer's failure to pay; and
 - b) the correct overdue and undisputed sum; and
 - c) the reasons why the undisputed sum is due; and
 - d) the requirement on the Customer to remedy the failure to pay;
- 31.2 If a Termination Notice is issued in accordance with clause 31.1 this Contract will terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice).
- 31.3 Termination rights under clause 31.1 shall not apply where the failure to pay is due to the Customer exercising its right(s) of retention and/or set off.
- 31.4 The Supplier shall not suspend the supply of the Goods and/or Services for failure of the Customer to pay undisputed sums of money (whether in whole or in part).