**DPS Schedule 6 (Order Form Template and Order**

**Schedules)**

**Order Form**

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| ORDER REFERENCE:   | 705152450 - CLOUD HOSTED CYBER SECURITY VULNERABILITY SERVICE |
| THE BUYER:   | MINISTRY OF DEFENCE |
| BUYER ADDRESS   | Leach BuildingWhale IslandPortsmouthHampshirePO2 8BY |
| THE SUPPLIER:  | Arcanum Information Security Limited,  |
| SUPPLIER ADDRESS: | Ty Penywaun, Mountain Road, Bedwas, Caerphilly.CF83 8ER |
| REGISTRATION NUMBER: | Company number 06567907  |
| DUNS NUMBER:  | 211168162 |

 DPS SUPPLIER REGISTRATION SERVICE ID:Not known

APPLICABLE DPS CONTRACT

This Order Form is for the provision of the Deliverables and dated **15 Nov 2022.**

It’s issued under the DPS Contract with the reference number RM3764iii for the provision of Cyber Security Services.

DPS FILTER CATEGORY(IES):

Lot 1

ORDER INCORPORATED TERMS

The following documents are incorporated into this Order Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Order Special Terms and Order Special Schedules.
2. Joint Schedule 1 (Definitions and Interpretation) RM3764iii
3. The following Schedules in equal order of precedence:

* + Joint Schedules for RM3764iii

o Joint Schedule 1 (Definitions)

Joint Schedule 2 (Variation Form)

o Joint Schedule 3 (Insurance Requirements)

o Joint Schedule 4 (Commercially Sensitive Information)

* + - Joint Schedule 6 (Key Subcontractors)
		- Joint Schedule 7 (Financial Difficulties)
		- Joint Schedule 8 (Guarantee)
		- Joint Schedule 10 (Rectification Plan)
		- Joint Schedule 11 (Processing Data)

* + Order Schedules for RM3764iii
		- Order Schedule 1 (Transparency Reports)
		- Order Schedule 2 (Staff Transfer)
		- Order Schedule 4 (Order Tender)
		- Order Schedule 5 (Pricing Details)
		- Order Schedule 6 (ICT Services)
		- Order Schedule 7 (Key Supplier Staff )
		- Order Schedule 8 (Business Continuity and Disaster Recovery)
		- Order Schedule 9 (Security)
		- Order Schedule 10 (Exit Management)
		- Order Schedule 13 (Implementation Plan and Testing)
		- Order Schedule 14 (Service Levels)
		- Order Schedule 15 (Order Contract Management)
		- Order Schedule 17 (MOD Terms)
		- Order Schedule 18 (Background Checks)
		- Order Schedule 20 (Order Specification)
		- Order Schedule 22 (Secret Matters)
1. CCS Core Terms (DPS version)
2. Joint Schedule 5 (Corporate Social Responsibility) RM3764iii
3. Annexes A & B to Order Schedule 6

No other Supplier terms are part of the Order Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

ORDER SPECIAL TERMS

The following Special Terms are incorporated into this Order Contract:

Redacted under FOIA Section 43, Commercial interests

ORDER START DATE: 01 December 2022

ORDER EXPIRY DATE: 30 September 2024

ORDER INITIAL PERIOD: 22 months

ORDER OPTIONAL EXTENSION: Up to the lesser of 3 years total contract duration or 50% increase of original contract value.

DELIVERABLES

See details in Order Schedule 20 (Order Specification)

MAXIMUM LIABILITY

The limitation of liability for this Order Contract is stated in Clause 11.2 of the Core Terms.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is£165,945.27

ORDER CHARGES

See details in Order Schedule 5 (Pricing Details)]

REIMBURSABLE EXPENSES

Recoverable as stated in the DPS Contract

PAYMENT METHOD

Payment to be made monthly in arrears via EXOSTAR/ CP&F, following Authority acceptance of monthly invoice containing days worked and worker grade as per Order Schedule 5 (Pricing Details).

BUYER’S INVOICE ADDRESS:

Navy Command Headquarters

Leach Building

Whale Island

Portsmouth

PO2 8BY

BUYER’S AUTHORISED REPRESENTATIVE

Redacted under FOIA Section 40, Personal Information

Navy Commercial, Commercial Category Manager

BUYER’S ENVIRONMENTAL POLICY

Available online at: https://www.gov.uk/government/collections/sustainable-development-mod

BUYER’S SECURITY POLICY

Detailed in attached Security Aspects Letter, in addition to JSP 440 available on internal MOD Defnet.

SUPPLIER’S AUTHORISED REPRESENTATIVE

Redacted under FOIA Section 40, Personal Information

SUPPLIER’S CONTRACT MANAGER

Redacted under FOIA Section 40, Personal Information

PROGRESS REPORT FREQUENCY

On the first Working Day of each calendar month

PROGRESS MEETING FREQUENCY

Quarterly on the first Working Day of each quarter]

KEY STAFF 1

Redacted under FOIA Section 40, Personal Information

KEY STAFF 2

Redacted under FOIA Section 40, Personal Information

KEY SUBCONTRACTOR(S)

Redacted under FOIA Section 43, Commercial interests

COMMERCIALLY SENSITIVE INFORMATION

Supplier’s Commercially Sensitive Information:

Redacted under FOIA Section 43, Commercial interests

SERVICE CREDITS

Not applicable

ADDITIONAL INSURANCES

Not applicable

GUARANTEE

Not applicable

SOCIAL VALUE COMMITMENT

The Supplier agrees, in providing the Deliverables and performing its obligations under the Order Contract, that it will comply with the social value commitments in Order Schedule 4 (Order Tender)

|  |  |
| --- | --- |
| **For and on behalf of the Supplier:**  | **For and on behalf of the Buyer:**  |
| Signature:  |  Redacted under FOIA Section 40, Personal Information  | Signature:  |  Redacted under FOIA Section 40, Personal Information  |
| Name:  |  Redacted under FOIA Section 40, Personal Information  | Name:  | Redacted under FOIA Section 40, Personal Information  |
| Role:  | Redacted under FOIA Section 40, Personal Information  | Role:  | Redacted under FOIA Section 40, Personal Information  |
| Date:  |  Redacted under FOIA Section 40, Personal Information  | Date:  |  Redacted under FOIA Section 40, Personal Information  |

1. **Joint Schedule 1 (Definitions)**
	1. In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
	2. If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, 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.
	3. In each Contract, unless the context otherwise requires:
		1. the singular includes the plural and vice versa;
		2. reference to a gender includes the other gender and the neuter;
		3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
		4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
		5. 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**";
		6. 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;
		7. 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 the Contract;
		8. references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
		9. references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
		10. references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
		11. the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract; and
		12. where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole.
	4. In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **“Accreditations and Standards”** | 1. the Accreditations and Standards Filter Category detailed in DPS Schedule 1.
 |
| **"Additional Insurances"** | 1. insurance requirements relating to an Order Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
 |
| **"Admin Fee”** | 1. means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees;
 |
| **"Affected Party"** | 1. the party seeking to claim relief in respect of a Force Majeure Event;
 |
| **"Affiliates"** | 1. in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
 |
| **“Annex”** | 1. extra information which supports a Schedule;
 |
| **"Approval"** | 1. the prior written consent of the Buyer and "**Approve**" and "**Approved**" shall be construed accordingly;
 |
| **"Audit"** | 1. the Relevant Authority’s right to:
2. verify the accuracy of the Charges and any other amounts payable by a Buyer under an Order Contract (including proposed or actual variations to them in accordance with the Contract);
3. verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
4. verify the Open Book Data;
5. verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;
6. identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
7. identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
8. obtain such information as is necessary to fulfil the Relevant Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
9. review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;
10. carry out the Relevant Authority’s internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;
11. 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 Relevant Authority has used its resources;
12. verify the accuracy and completeness of any Management Information delivered or required by the DPS Contract;
 |
| **"Auditor"** | 1. the Relevant Authority’s internal and external auditors;
2. the Relevant Authority’s statutory or regulatory auditors;
3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
4. HM Treasury or the Cabinet Office;
5. any party formally appointed by the Relevant Authority to carry out audit or similar review functions; and
6. successors or assigns of any of the above;
 |
| **"Authority"** |  CCS and each Buyer; |
| **"Authority Cause"** | 1. any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
 |
| **"BACS"** | 1. the Bankers’ Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
 |
| **"Beneficiary"** | 1. a Party having (or claiming to have) the benefit of an indemnity under this Contract;
 |
| **"Buyer"** | 1. the relevant public sector purchaser identified as such in the Order Form;
 |
| **"Buyer Assets"** | 1. the Buyer’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
 |
| **"Buyer Authorised Representative"** | 1. the representative appointed by the Buyer from time to time in relation to the Order Contract initially identified in the Order Form;
 |
| **"Buyer Premises"** | 1. premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
 |
| **“Buyer Property”** | 1. the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Order Contract;
 |
| **"CCS"** | 1. the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
 |
| **"CCS Authorised Representative"** | 1. the representative appointed by CCS from time to time in relation to the DPS Contract initially identified in the DPS Appointment Form and subsequently on the Platform;
 |
| **"Central Government Body"** | 1. a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
	1. Government Department;
	2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
	3. Non-Ministerial Department; or
	4. Executive Agency;
 |
| **"Change in Law"** | 1. any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
 |
| **"Change of Control"** | 1. a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
 |
| **"Charges"** | the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Order Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Order Contract less any Deductions; |
| **"Claim"** | 1. any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
 |
| **"Commercially Sensitive Information"** | 1. the Confidential Information listed in the DPS Appointment Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
 |
| **"Comparable Supply"** | 1. the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
 |
| **"Compliance Officer"** | 1. the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
 |
| **"Confidential Information"** | 1. means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as **"confidential"**) or which ought reasonably to be considered to be confidential;
 |
| **"Conflict of Interest"** | 1. a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS;
 |
| **"Contract"** | 1. either the DPS Contract or the Order Contract, as the context requires;
 |
| **"Contracts Finder"** | 1. the Government’s publishing portal for public sector procurement opportunities;
 |
| **"Contract Period"** | 1. the term of either a DPS Contract or Order Contract from the earlier of the:
	1. applicable Start Date; or
	2. the Effective Date

until the applicable End Date;  |
| **"Contract Value"** | 1. the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
 |
| **"Contract Year"** | 1. a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
 |
| **"Control"** | 1. control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly;
 |
| **“Controller”** | 1. has the meaning given to it in the GDPR;
 |
| **“Core Terms”** | CCS’ standard terms and conditions for common goods and services which govern how Supplier must interact with CCS and Buyers under DPS Contracts and Order Contracts; |
| **"Costs"** | 1. the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:
	1. the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Man Day, of engaging the Supplier Staff, including:
		1. base salary paid to the Supplier Staff;
		2. employer’s National Insurance contributions;
		3. pension contributions;
		4. car allowances;
		5. any other contractual employment benefits;
		6. staff training;
		7. work place accommodation;
		8. work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and
		9. reasonable recruitment costs, as agreed with the Buyer;
	2. costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
	3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables;
	4. Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;
2. but excluding:
	1. Overhead;
	2. financing or similar costs;
	3. maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Order Contract Period whether in relation to Supplier Assets or otherwise;
	4. taxation;
	5. fines and penalties;
	6. non-cash items (including depreciation, amortisation, impairments and movements in provisions);
 |
| **"Crown Body"** | 1. the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
 |
| **"CRTPA"** | 1. the Contract Rights of Third Parties Act 1999;
 |
| **“Cyber Security Services”** | 1. those Service available under this DPS Contract as documented at DPS Schedule 1
 |
| **“Data Loss Event”** | 1. any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
 |
| **"Data Protection Legislation"** | 1. (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
 |
| **“Data Protection Impact Assessment”** | 1. an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
 |
| **"Data Protection Officer"** | 1. has the meaning given to it in the GDPR;
 |
| **"Data Subject"** | 1. has the meaning given to it in the GDPR;
 |
| **"Data Subject Access Request"** | 1. a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
 |
| **"Deductions"** | 1. all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under an Order Contract;
 |
| **"Default"** | 1. any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority;
 |
| **"Default Management Levy"** | 1. has the meaning given to it in Paragraph 8.1.1 of DPS Schedule 5 (Management Levy and Information);
 |
| **"Delay Payments"** | 1. the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
 |
| **"Deliverables"** | 1. Goods and/or Services that may be ordered under the Contract including the Documentation;
 |
| **"Delivery"** | 1. delivery of the relevant Deliverable or Milestone in accordance with the terms of an Order Contract as confirmed and accepted by the Buyer by confirmation in writing to the Supplier. "**Deliver**" and "**Delivered**" shall be construed accordingly;
 |
| **"Disaster"** | 1. the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Order Form (for the purposes of this definition the **"Disaster Period**");
 |
| **"Disclosing Party"** | 1. the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
 |
| **"Dispute"** | 1. any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
 |
| **"Dispute Resolution Procedure"** | 1. the dispute resolution procedure set out in Clause 34 (Resolving disputes);
 |
| **"Documentation"** | descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:* 1. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables;
	2. is required by the Supplier in order to provide the Deliverables; and/or
	3. has been or shall be generated for the purpose of providing the Deliverables;
 |
| **"DOTAS"** | the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions; |
| **“DPA 2018”** | the Data Protection Act 2018; |
| **“DPS”** | the dynamic purchasing system operated by CCS in accordance with Regulation 34 that this DPS Contract governs access to;  |
| **"DPS Application"** | the application submitted by the Supplier to CCS and annexed to or referred to in DPS Schedule 2 (DPS Application); |
| **"DPS Appointment Form"** | the document outlining the DPS Incorporated Terms and crucial information required for the DPS Contract, to be executed by the Supplier and CCS and subsequently held on the Platform; |
| **"DPS Contract"** | the dynamic purchasing system access agreement established between CCS and the Supplier in accordance with Regulation 34 by the DPS Appointment Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the OJEU Notice; |
| **"DPS Contract Period"** | the period from the DPS Start Date until the End Date or earlier termination of the DPS Contract; |
| **"DPS Expiry Date"** | the date of the end of the DPS Contract as stated in the DPS Appointment Form; |
| **"DPS Incorporated Terms"** | the contractual terms applicable to the DPS Contract specified in the DPS Appointment Form; |
| **"DPS Initial Period"** | the initial term of the DPS Contract as specified in the DPS Appointment Form; |
| **"DPS Optional Extension Period"** | such period or periods beyond which the DPS Initial Period may be extended up to a maximum of the number of years in total specified in the DPS Appointment Form; |
| **"DPS Pricing"** | the maximum price(s) applicable to the provision of the Deliverables set out in DPS Schedule 3 (DPS Pricing); |
| **"DPS Registration"** | the registration process a Supplier undertakes when submitting its details onto the Platform; |
| **"DPS SQ Submission"** | the Supplier’s selection questionnaire response; |
| **"DPS Special Terms"** | any additional terms and conditions specified in the DPS Appointment Form incorporated into the DPS Contract; |
| **"DPS Start Date"** | the date of start of the DPS Contract as stated in the DPS Appointment Form; |
| **"Due Diligence Information"** | any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date; |
| **"Effective Date"** | 1. the date on which the final Party has signed the Contract;
 |
| **"EIR"** | 1. the Environmental Information Regulations 2004;
 |
| **"Employment Regulations"** | 1. the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;
 |
| **"End Date"**  | the earlier of: * 1. the Expiry Date (as extended by any Extension Period exercised by the Authority under Clause 10.2); or
	2. if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
 |
| **"Environmental Policy"** | 1. to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
 |
| **“Estimated Year 1 Contract Charges”** | 1. the anticipated total charges payable by the Supplier in the first Contract Year specified in the Order Form;
 |
| **"Estimated Yearly Charges"** | 1. means for the purposes of calculating each Party’s annual liability under clause 11.2 :
2. i)  in the first Contract Year, the Estimated Year 1 Contract Charges; or
3. ii) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or
4. iii) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
 |
| **"Equality and Human Rights Commission"** | 1. the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
 |
| **"Existing IPR"** | 1. any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
 |
| **"Expiry Date"** | the DPS Expiry Date or the Order Expiry Date (as the context dictates);  |
| **"Extension Period"** | 1. the DPS Optional Extension Period or the Order Optional Extension Period as the context dictates;
 |
| **"Filter Categories"** | 1. the number of categories specified in DPS Schedule 1 (Specification), if applicable;
 |
| **"FOIA"** | 1. the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
 |
| **"Force Majeure Event"** | 1. any event, occurrence, circumstance, matter or cause affecting the performance by either the Relevant Authority or the Supplier of its obligations arising from:
	1. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;
	2. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
	3. acts of a Crown Body, local government or regulatory bodies;
	4. fire, flood or any disaster; or
	5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
		1. any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
		2. any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
		3. any failure of delay caused by a lack of funds;
 |
| **"Force Majeure Notice"** | 1. a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
 |
| **"GDPR"** | 1. the General Data Protection Regulation (Regulation (EU) 2016/679);
 |
| **"General Anti-Abuse Rule"** | * 1. the legislation in Part 5 of the Finance Act 2013; and
	2. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
 |
| **"General Change in Law"** | 1. a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
 |
| **"Goods"** | 1. goods made available by the Supplier as specified in DPS Schedule 1 (Specification) and in relation to an Order Contract as specified in the Order Form;
 |
| **"Good Industry Practice"** | 1. standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
 |
| **"Government"** | 1. the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
 |
| **"Government Data"** | * 1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority’s Confidential Information, and which:
		1. are supplied to the Supplier by or on behalf of the Authority; or
		2. the Supplier is required to generate, process, store or transmit pursuant to a Contract; or
	2. any Personal Data for which the Authority is the Data Controller;
 |
| **"Government Procurement Card"** | 1. the Government’s preferred method of purchasing and payment for low value goods or services;
2. https://www.gov.uk/government/publications/government-procurement-card--2;
 |
| **"Guarantor"** | 1. the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;
 |
| **"Halifax Abuse Principle"** | 1. the principle explained in the CJEU Case C-255/02 Halifax and others;
 |
| **"HMRC"** | 1. Her Majesty’s Revenue and Customs;
 |
| **"ICT Policy"** | 1. the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Order Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
 |
| **"Impact Assessment"** | 1. an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:
	1. details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;
	2. details of the cost of implementing the proposed Variation;
	3. details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the DPS Pricing/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
	4. a timetable for the implementation, together with any proposals for the testing of the Variation; and
	5. such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;
 |
| **"Implementation Plan"** | 1. the plan for provision of the Deliverables set out in Order Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
 |
| **"Indemnifier"** | 1. a Party from whom an indemnity is sought under this Contract;
 |
| **“Independent Control”** | 1. where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data and “**Independent Controller**” shall be construed accordingly;
 |
| **"Information"** | 1. has the meaning given under section 84 of the Freedom of Information Act 2000;
 |
| **"Information Commissioner"** | 1. the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
 |
| **"Initial Period"** | 1. the initial term of a Contract specified on the Platform or the Order Form, as the context requires;
 |
| **"Insolvency Event"** | * 1. in respect of a person:
	2. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
	3. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
	4. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
	5. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
	6. an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
	7. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
	8. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
	9. where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
	10. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
 |
| **"Intellectual Property Rights" or "IPR"** | * 1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
	2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
	3. all other rights having equivalent or similar effect in any country or jurisdiction;
 |
| **"Invoicing Address"** | 1. the address to which the Supplier shall Invoice the Buyer as specified in the Order Form;
 |
| **"IPR Claim"** | 1. any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;
 |
| **"IR35"** | 1. the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>;
 |
| **“Joint Controllers”** | 1. where two or more Controllers jointly determine the purposes and means of processing;
 |
| **"Key Personnel"** | 1. the individuals (if any) identified as such in the Order Form;
 |
| **"Key Sub-Contract"** | 1. each Sub-Contract with a Key Subcontractor;
 |
| **"Key Subcontractor"** | 1. any Subcontractor:
	1. which is relied upon to deliver any work package within the Deliverables in their entirety; and/or
	2. which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or
	3. with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Order Contract,

and the Supplier shall list all such Key Subcontractors on the Platform and in the Key Subcontractor Section in the Order Form; |
| **"Know-How"** | 1. all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party’s possession before the applicable Start Date;
 |
| **"Law"** | 1. any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;
 |
| **“LED”** | 1. Law Enforcement Directive (Directive (EU) 2016/680);
 |
| **"Losses"** | 1. all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "**Loss**" shall be interpreted accordingly;
 |
| "**Malicious Software"** | 1. any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
 |
| **"Man Hours"** | 1. the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
 |
| **"Management Information"** | 1. the management information specified in DPS Schedule 5 (Management Levy and Information);
 |
| **"Management Levy"** | 1. the sum specified on the Platform payable by the Supplier to CCS in accordance with DPS Schedule 5 (Management Levy and Information);
 |
| **"Marketing Contact"** | 1. shall be the person identified in the DPS Appointment Form;
 |
| **“MI Default”** | 1. means whentwo (2) MI Reports are not provided in any rolling six (6) month period;
 |
| **"MI Failure"** | 1. means when an MI report:
	1. contains any material errors or material omissions or a missing mandatory field; or
	2. is submitted using an incorrect MI reporting Template; or
	3. is not submitted by the reporting date (including where a declaration of no business should have been filed);
 |
| **"MI Report"** | 1. means a report containing Management Information submitted to the Authority in accordance with DPS Schedule 5 (Management Levy and Information);
 |
| **"MI Reporting Template"** | 1. means the form of report set out in the Annex to DPS Schedule 5 (Management Levy and Information) setting out the information the Supplier is required to supply to the Authority;
 |
| **"Milestone"** | 1. an event or task described as such in the Implementation Plan;
 |
| **"Milestone Date"** | 1. the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be achieved;
 |
| **"Month"** | 1. a calendar month and "**Monthly**" shall be interpreted accordingly;
 |
| **"National Insurance"** | 1. contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
 |
| **"New IPR"** | * 1. IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or
	2. IPR in or arising as a result of the performance of the Supplier’s obligations under a Contract and all updates and amendments to the same;
1. but shall not include the Supplier’s Existing IPR;
 |
| **"Occasion of Tax Non –Compliance"** | 1. where:
	1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
		1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
		2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
	2. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;
 |
| **"Open Book Data"** | 1. complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Order Contract, including details and all assumptions relating to:
	1. the Supplier’s Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;
	2. operating expenditure relating to the provision of the Deliverables including an analysis showing:
		1. the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
		2. manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
		3. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
		4. Reimbursable Expenses, if allowed under the Order Form;
	3. Overheads;
	4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
	5. the Supplier Profit achieved over the DPS Contract Period and on an annual basis;
	6. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
	7. an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and
	8. the actual Costs profile for each Service Period;
 |
| **“Open Government Licence”** | 1. means the licensing terms for use of government intellectual property at:<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>
 |
| **"Order"** | 1. means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract;
 |
| **"Order Contract"** | 1. the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the DPS Contract), which consists of the terms set out and referred to in the Order Form;
 |
| **"Order Contract Period"** | 1. the Contract Period in respect of the Order Contract;
 |
| **"Order Expiry Date"** | 1. the date of the end of an Order Contract as stated in the Order Form;
 |
| **"Order Form"** | 1. a completed Order Form Template (or equivalent information issued by the Buyer) used to create an Order Contract;
 |
| **"Order Form Template"** | 1. the template in DPS Schedule 6 (Order Form Template and Order Schedules);
 |
| **"Order Incorporated Terms"** | 1. the contractual terms applicable to the Order Contract specified under the relevant heading in the Order Form;
 |
| **"Order Initial Period"** | 1. the Initial Period of an Order Contract specified in the Order Form;
 |
| **"Order Optional Extension Period"** | 1. such period or periods beyond which the Order Initial Period may be extended up to a maximum of the number of years in total specified in the Order Form;
 |
| **"Order Procedure"** | 1. the process for awarding an Order Contract pursuant to Clause 2 (How the contract works) and DPS Schedule 7 (Order Procedure);
 |
| **"Order Special Terms"** | 1. any additional terms and conditions specified in the Order Form incorporated into the applicable Order Contract;
 |
| **"Order Start Date"** | 1. the date of start of an Order Contract as stated in the Order Form;
 |
| **"Order Tender"** | 1. the tender submitted by the Supplier in response to the Buyer’s Statement of Requirements following an Order Procedure and set out at Order Schedule 4 (Order Tender);
 |
| **"Other Contracting Authority"** | 1. any actual or potential Buyer under the DPS Contract;
 |
| **"Overhead"** | 1. those amounts which are intended to recover a proportion of the Supplier’s or the Key Subcontractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
 |
| **"Parliament"** | 1. takes its natural meaning as interpreted by Law;
 |
| **"Party"** | 1. in the context of the DPS Contract, CCS or the Supplier, and in the in the context of an Order Contract the Buyer or the Supplier. "**Parties**" shall mean both of them where the context permits;
 |
| **"Performance Indicators" or "PIs"** | 1. the performance measurements and targets in respect of the Supplier’s performance of the DPS Contract set out in DPS Schedule 4 (DPS Management);
 |
| **"Personal Data"** | 1. has the meaning given to it in the GDPR;
 |
| **“Personal Data Breach”** | 1. has the meaning given to it in the GDPR;
 |
| **“Personnel”** | 1. all directors, officers, employees, agents, consultants and suppliers of a Party and/or of any Subcontractor and/or Subprocessor engaged in the performance of its obligations under a Contract;
 |
| **“Platform”** | 1. the online application operated on behalf of CCS to facilitate the technical operation of the DPS;
 |
| **"Prescribed Person"** | 1. a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>;
 |
| **“Processing”** | 1. has the meaning given to it in the GDPR;
 |
| **“Processor”** | 1. has the meaning given to it in the GDPR;
 |
| **“Processor Personnel”** | 1. all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;
 |
| **"Progress Meeting"** | 1. a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
 |
| **"Progress Meeting Frequency"** | 1. the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
 |
| **“Progress Report”** | 1. a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
 |
| **“Progress Report Frequency”** | 1. the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;
 |
| **“Prohibited Acts”** | * 1. to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:
		1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;
	2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract; or
	3. committing any offence:
		1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
		2. under legislation or common law concerning fraudulent acts; or
		3. defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or
	4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
 |
| **“Protective Measures”** | 1. appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in DPS Schedule 9 (Cyber Essentials), if applicable, in the case of the DPS Contract or Order Schedule 9 (Security), if applicable, in the case of an Order Contract;
 |
| **“Recall”** | 1. a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;
 |
| **"Recipient Party"** | 1. the Party which receives or obtains directly or indirectly Confidential Information;
 |
| **"Rectification Plan"** | 1. the Supplier’s plan (or revised plan) to rectify its breach using the template in Joint Schedule 10 (Rectification Plan Template)which shall include:
	1. full details of the Default that has occurred, including a root cause analysis;
	2. the actual or anticipated effect of the Default; and
	3. 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);
 |
| **"Rectification Plan Process"** | 1. the process set out in Clause 10.4.3 to 10.4.5 (Rectification Plan Process);
 |
| **"Regulations"** | 1. the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
 |
| **"Reimbursable Expenses"** | 1. the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:
	1. travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and
	2. subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
 |
| **"Relevant Authority"** | 1. the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;
 |
| **"Relevant Authority's Confidential Information"** | * 1. all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);
	2. any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority’s attention or into the Relevant Authority’s possession in connection with a Contract; and
1. information derived from any of the above;
 |
| **"Relevant Requirements"** | 1. all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
 |
| **"Relevant Tax Authority"** | 1. HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
 |
| **"Reminder Notice"** | 1. a notice sent in accordance with Clause 10.6 given by the Supplier to the Buyer providing notification that payment has not been received on time;
 |
| **"Replacement Deliverables"** | 1. any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Order Expiry Date, whether those goods are provided by the Buyer internally and/or by any third party;
 |
| **"Replacement Subcontractor"** | 1. a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
 |
| **"Replacement Supplier"** | 1. any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
 |
| **"Request For Information"** | 1. a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
 |
| **"Required Insurances"** | 1. the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
 |
| **“Schedules"** | 1. any attachment to a DPS or Order Contract which contains important information specific to each aspect of buying and selling;
 |
| **“Sectors and Domains”** | 1. the Sectors and Domains Filter Category defined in DPS Schedule 1;
 |
| **"Security Management Plan"** | 1. the Supplier's security management plan prepared pursuant to Order Schedule 9 (Security) (if applicable);
 |
| **"Security Policy"** | 1. the Buyer's security policy, referred to in the Order Form, in force as at the Order Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
 |
| **"Self Audit Certificate"** | 1. means the certificate in the form as set out in DPS Schedule 8 (Self Audit Certificate);
 |
| **"Serious Fraud Office"** | 1. the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
 |
| **“Service Levels”** | 1. any service levels applicable to the provision of the Deliverables under the Order Contract (which, where Order Schedule 14 (Service Credits) is used in this Contract, are specified in the Annex to Part A of such Schedule);
 |
| **"Service Period"** | 1. has the meaning given to it in the Order Form;
 |
| **"Services"** | 1. services made available by the Supplier as specified in DPS Schedule 1 (Specification) and in relation to an Order Contract as specified in the Order Form;
 |
| **"Service Transfer"** | 1. any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
 |
| **"Service Transfer Date"** | 1. the date of a Service Transfer;
 |
| **“Service Type”** | 1. means the Service Types Filter Category detailed in DPS Schedule 1
 |
| **"Sites"** | 1. any premises (including the Buyer Premises, the Supplier’s premises or third party premises) from, to or at which:
	1. the Deliverables are (or are to be) provided; or
	2. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
 |
| **"SME"** | 1. an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
 |
| **"Special Terms"** | 1. any additional Clauses set out in the DPS Appointment Form or Order Form which shall form part of the respective Contract;
 |
| **"Specific Change in Law"** | 1. a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
 |
| **"Specification"** | 1. the specification set out in DPS Schedule 1 (Specification), as may, in relation to an Order Contract, be supplemented by the Order Form;
 |
| **"Standards"** | 1. any:
	1. standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
	2. standards detailed in the specification in DPS Schedule 1 (Specification);
	3. standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time;
	4. relevant Government codes of practice and guidance applicable from time to time;
 |
| **"Start Date"** | 1. in the case of the DPS Contract, the date specified on the DPS Appointment Form, and in the case of an Order Contract, the date specified in the Order Form;
 |
| **"Statement of Requirements"** | 1. a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Order Procedure;
 |
| **"Storage Media"** | 1. the part of any device that is capable of storing and retrieving data;
 |
| **"Sub-Contract"** | 1. any contract or agreement (or proposed contract or agreement), other than an Order Contract or the DPS Contract, pursuant to which a third party:
	1. provides the Deliverables (or any part of them);
	2. provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or
	3. is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
 |
| **"Subcontractor"** | 1. any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
 |
| **"Subprocessor"** | 1. any third party appointed to process Personal Data on behalf of that Processor related to a Contract;
 |
| **"Supplier"** | 1. the person, firm or company identified in the DPS Appointment Form;
 |
| **"Supplier Assets"** | 1. all assets and rights used by the Supplier to provide the Deliverables in accordance with the Order Contract but excluding the Buyer Assets;
 |
| **"Supplier Authorised Representative"** | 1. the representative appointed by the Supplier named in the DPS Appointment Form, or later defined in an Order Contract;
 |
| **"Supplier's Confidential Information"** | * 1. any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;
	2. any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier’s attention or into the Supplier’s possession in connection with a Contract;
	3. Information derived from any of (a) and (b) above;
 |
| **"Supplier's Contract Manager”**  | the person identified in the Order Form appointed by the Supplier to oversee the operation of the Order Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment; |
| **"Supplier Equipment"** | 1. the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Order Contract;
 |
| **"Supplier Non-Performance"** | 1. where the Supplier has failed to:
	1. Achieve a Milestone by its Milestone Date;
	2. provide the Goods and/or Services in accordance with the Service Levels ; and/or
	3. comply with an obligation under a Contract;
 |
| **"Supplier Profit"** | 1. in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of an Order Contract for the relevant period;
 |
| **"Supplier Profit Margin"** | 1. in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
 |
| **"Supplier Staff"** | 1. all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under a Contract;
 |
| **“Supply Chain Information Report Template”** | 1. the document at Annex 1 of Joint Schedule 12 (Supply Chain Visibility);
 |
| **"Supporting Documentation"** | 1. sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Order Contract detailed in the information are properly payable;
 |
| **"Termination Notice"** | 1. a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;
 |
| **“Test”** | 1. any test required to be carried out pursuant to the Order Contract i) as set out in the Test Plan agreed pursuant to Part B of Order Schedule 13, ii) or as specified elsewhere in this Order Contract, and “Testing” and "Tested" shall be construed accordingly;
 |
| **"Third Party IPR"** | 1. Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
 |
| **"Transferring Supplier Employees"** | 1. those employees of the Supplier and/or the Supplier’s Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;
 |
| **"Transparency Information"** | 1. the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and1. (ii) Commercially Sensitive Information;
 |
| **"Transparency Reports"** | 1. the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Order Schedule 1 (Transparency Reports);
 |
| **"US-EU Privacy Shield Register"** | a list of companies maintained by the United States of America Department for Commence that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: <https://www.privacyshield.gov/list>;  |
| **"Variation"** | 1. has the meaning given to it in Clause 24 (Changing the contract);
 |
| **"Variation Form"** | 1. the form set out in Joint Schedule 2 (Variation Form);
 |
| **"Variation Procedure"** | 1. the procedure set out in Clause 24 (Changing the contract);
 |
| **"VAT"** | 1. value added tax in accordance with the provisions of the Value Added Tax Act 1994;
 |
| **"VCSE"** | 1. a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
 |
| **"Worker"** | 1. any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and
 |
| **"Working Day"** | 1. any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form.
 |

**Joint Schedule 2 (Variation Form)**

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

|  |
| --- |
| **Contract Details**  |
| This variation is between: | **[delete** as applicable:CCS / Buyer**]** ("**CCS” “the Buyer"**)And **[insert** name of Supplier**]** (**"the Supplier"**) |
| Contract name: | **[insert** name of contract to be changed] **(“the Contract”)** |
| Contract reference number: | **[insert** contract reference number] |
| **Details of Proposed Variation** |
| Variation initiated by: | **[delete** as applicable: CCS/Buyer/Supplier] |
| Variation number: | **[insert** variation number] |
| Date variation is raised: | **[insert** date] |
| Proposed variation |  |
| Reason for the variation: | **[insert** reason] |
| An Impact Assessment shall be provided within: | **[insert** number] days |
| **Impact of Variation** |
| Likely impact of the proposed variation: | **[Supplier to insert** assessment of impact]  |
| **Outcome of Variation** |
| Contract variation: | This Contract detailed above is varied as follows:* **[CCS/Buyer to insert** original Clauses or Paragraphs to be varied and the changed clause]
 |
| Financial variation: | Original Contract Value: | £ **[insert** amount] |
| Additional cost due to variation: | £ **[insert** amount] |
| New Contract value: | £ **[insert** amount] |

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete** as applicable:CCS / Buyer**]**
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the **[delete** as applicable:CCS / Buyer**]**

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

Signed by an authorised signatory to sign for and on behalf of the Supplier

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |

**Joint Schedule 3 (Insurance Requirements)**

**The insurance you need to have**

The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under an Order Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than:

the DPS Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and

the Order Contract Effective Date in respect of the Additional Insurances.

The Insurances shall be:

maintained in accordance with Good Industry Practice;

(so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;

taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and

maintained for at least six (6) years after the End Date.

The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

**How to manage the insurance**

Without limiting the other provisions of this Contract, the Supplier shall:

take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

**What happens if you aren’t insured**

The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

**Evidence of insurance you must provide**

The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

**Making sure you are insured to the required amount**

The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

**Cancelled Insurance**

The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

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 Relevant Authority (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.

**Insurance claims**

The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 0 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.

Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

**Joint Schedule 4 (Commercially Sensitive Information)**

**What is the Commercially Sensitive Information?**

In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.

Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).

Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| **No.** | **Date** | **Item(s)** | **Duration of Confidentiality** |
| --- | --- | --- | --- |
| 1 | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  |
| 2 | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  |

**Joint Schedule 5 (Corporate Social Responsibility)**

1. **What we expect from our Suppliers**
	1. In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government. (<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf>)
	2. CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
	3. The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.
2. **Equality and Accessibility**
	1. In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
		1. eliminate discrimination, harassment or victimisation of any kind; and
		2. advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.
3. **Modern Slavery, Child Labour and Inhumane Treatment**

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

* 1. The Supplier:
		1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
		2. shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
		3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
		4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world.
		5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
		6. shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
		7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
		8. shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
		9. shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
		10. shall not use or allow child or slave labour to be used by its Subcontractors;
		11. shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.
1. **Income Security**
	1. The Supplier shall:
		1. ensure that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
		2. ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
		3. ensure that all workers are provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
		4. not make deductions from wages:
			1. as a disciplinary measure
			2. except where permitted by law; or
			3. without expressed permission of the worker concerned;
		5. record all disciplinary measures taken against Supplier Staff; and
		6. ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.
2. **Working Hours**
	1. The Supplier shall:
		1. ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
		2. ensure that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
		3. ensure that use of overtime is used responsibly, taking into account:
			1. the extent;
			2. frequency; and
			3. hours worked;

by individuals and by the Supplier Staff as a whole;

* 1. The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
	2. Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
		1. this is allowed by national law;
		2. this is allowed by a collective agreement freely negotiated with a workers’ organisation representing a significant portion of the workforce;
		3. appropriate safeguards are taken to protect the workers’ health and safety; and
		4. the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
	3. All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.
1. **Sustainability**
	1. The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

**Joint Schedule 6 (Key Subcontractors)**

**Restrictions on certain subcontractors**

The Supplier is entitled to sub‑contract its obligations under the DPS Contract to the Key Subcontractors identified on the Platform.

The Supplier is entitled to sub-contract its obligations under an Order Contract to Key Subcontractors listed on the Platform who are specifically nominated in the Order Form.

Where during the Contract Period the Supplier wishes to enter into a new Key Sub‑contract or replace a Key Subcontractor, it must obtain the prior written consent of CCS and the Buyer and the Supplier shall, at the time of requesting such consent, provide CCS and the Buyer with the information detailed in Paragraph 0. The decision of CCS and the Buyer to consent or not will not be unreasonably withheld or delayed. Where CCS consents to the appointment of a New Key Subcontractor then they will be added to the Platform. Where the Buyer consents to the appointment of a New Key Subcontractor then they will be added to the Key Subcontractor section of the Order Form. CCS and the Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:

the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;

the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

the proposed Key Subcontractor employs unfit persons.

The Supplier shall provide CCS and the Buyer with the following information in respect of the proposed Key Subcontractor:

the proposed Key Subcontractor’s name, registered office and company registration number;

the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;

where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the CCS and the Buyer that the proposed Key Sub‑Contract has been agreed on "arm’s‑length" terms;

for CCS, the Key Sub‑Contract price expressed as a percentage of the total projected DPS Price over the DPS Contract Period;

for the Buyer, the Key Sub‑Contract price expressed as a percentage of the total projected Charges over the Order Contract Period; and

If requested by CCS and/or the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 0, the Supplier shall also provide:

a copy of the proposed Key Sub‑Contract; and

any further information reasonably requested by CCS and/or the Buyer.

The Supplier shall ensure that each new or replacement Key Sub‑Contract shall include:

provisions which will enable the Supplier to discharge its obligations under the Contracts;

a right under CRTPA for CCS and the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon CCS and the Buyer respectively;

a provision enabling CCS and the Buyer to enforce the Key Sub‑Contract as if it were the Supplier;

a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub‑Contract to CCS and/or the Buyer;

obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the DPS Contract in respect of:

the data protection requirements set out in Clause 14 (Data protection);

the FOIA and other access request requirements set out in Clause 16 (When you can share information);

the obligation not to embarrass CCS or the Buyer or otherwise bring CCS or the Buyer into disrepute;

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; and

the conduct of audits set out in Clause 6 (Record keeping and reporting);

provisions enabling the Supplier to terminate the Key Sub‑Contract on notice on terms no more onerous on the Supplier than those imposed on CCS and the Buyer under Clauses 10.4 (When CCS or the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and

a provision restricting the ability of the Key Subcontractor to sub‑contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub‑Contract without first seeking the written consent of CCS and the Buyer.

**Joint Schedule 7 (Financial Difficulties)**

**Definitions**

In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Credit Rating Threshold"** | the minimum credit rating level for the Monitored Company as set out in the third Column of the table at Annex 2 and |
| **"Financial Distress Event"** | the occurrence or one or more of the following events:the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party; Monitored Company committing a material breach of covenant to its lenders; a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; orany of the following:commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract; non-payment by the Monitored Company of any financial indebtedness;any financial indebtedness of the Monitored Company becoming due as a result of an event of default; orthe cancellation or suspension of any financial indebtedness in respect of the Monitored Companyin each case which CCS reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Order Contract; |
| **"Financial Distress Service Continuity Plan"** | a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with each Order Contract in the event that a Financial Distress Event occurs; |
| **“Monitored Company”** | Supplier [the DPS Guarantor/ [and Order Guarantor] or any Key Subcontractor] |
| **"Rating Agency"** | the rating agency stated in Annex 1. |

**When this Schedule applies**

The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.

The terms of this Schedule shall survive termination or expiry of this Contract.

**What happens when your credit rating changes**

The Supplier warrants and represents to CCS that as at the Start Date the credit rating issued for the Monitored Companies by the Rating Agency is as set out in Annex 2.

The Supplier shall promptly (and in any event within ten (10) Working Days) notify CCS in writing if there is any downgrade in the credit rating issued by the Rating Agency for a Monitored Company which means that the credit rating for the Monitored company falls below the Credit Rating Threshold.

If there is any such downgrade credit rating issued by the Rating Agency for a Monitored Company the Supplier shall at CCS’ request ensure that the Monitored Company’s auditors thereafter provide CCS within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by CCS (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or such other date as may be requested by CCS. For these purposes the "quick ratio" on any date means:



where:

|  |  |
| --- | --- |
| A | is the value at the relevant date of all cash in hand and at the bank of the Monitored Company]; |
| B | is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date;  |
| C | is the value at the relevant date of all account receivables of the Monitored]; and |
| D | is the value at the relevant date of the current liabilities of the Monitored Company]. |

The Supplier shall:

regularly monitor the credit ratings of each Monitored Company with the Rating Agency; and

promptly notify (or shall procure that its auditors promptly notify) CCS in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if the Rating Agency has rated the Monitored Company at or below the applicable Credit Rating Threshold.

**What happens if there is a financial distress event**

In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if CCS becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and CCS shall have the rights and remedies as set out in Paragraphs 0 to 0.

In the event that a Financial Distress Event arises due to a Key Subcontractor notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, CCS shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

rectify such late or non-payment; or

demonstrate to CCS's reasonable satisfaction that there is a valid reason for late or non-payment.

The Supplier shall and shall procure that the other Monitored Companies shall:

at the request of CCS meet CCS as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Call-Off Contract; and

where CCS reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract:

submit to CCS for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and

provide such financial information relating to the Monitored Company as CCS may reasonably require.

If CCS does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to CCS within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by CCS or referred to the Dispute Resolution Procedure.

If CCS considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

Following Approval of the Financial Distress Service Continuity Plan by CCS, the Supplier shall:

on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance each Contract and delivery of the Deliverables in accordance with each Call-Off Contract;

where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 0 and 0 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify CCS and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 0.

CCS shall be able to share any information it receives from the Supplier in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.

**When CCS or the Buyer can terminate for financial distress**

CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Call-Off Contracts for material Default if:

the Supplier fails to notify CCS of a Financial Distress Event in accordance with Paragraph 3.4;

CCS and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.

**What happens If your credit rating is still good**

Without prejudice to the Supplier’s obligations and CCS’ and the Buyer’s rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agency reviews and reports subsequently that the credit rating does not drop below the relevant Credit Rating Threshold, then:

the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and

CCS shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

**ANNEX 1: RATING AGENCY**

Dun & Bradstreet

ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

**Part 1: Current Rating**

|  |  |  |
| --- | --- | --- |
| **Entity** | **Credit rating (D&B Failure Rating)** | **Credit Rating Threshold** |
| Supplier | [D&B Failure Rating] | [D&B Failure Rating – 10%] |
| [DPS Guarantor/ [and Order Guarantor] | [D&B Failure Rating] | [D&B Failure Rating – 10%] |
| [Key Subcontractor] | [D&B Failure Rating] | [D&B Failure Rating – 10%] |

**Joint Schedule 8 (Guarantee)**

**Definitions**

In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"DPS Guarantor"** | any person acceptable to CCS to give a DPS Guarantee;  |
| **"DPS Guarantee"** | a deed of guarantee in favour of CCS and all Buyers in the form set out in the Annex to this Schedule; |
| **"Order Guarantee"** | a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and |
| **"Order Guarantor"** | the person acceptable to a Buyer to give an Order Guarantee; |

 **DPS Guarantee**

Where CCS has notified the Supplier that the award of the DPS Contract is conditional upon receipt of a valid DPS Guarantee, then on or prior to the execution of the DPS Contract, as a condition for the award of the DPS Contract, the Supplier must have delivered to CCS:

an executed DPS Guarantee from a DPS Guarantor; and

a certified copy extract of the board minutes and/or resolution of the DPS Guarantor approving the execution of the DPS Guarantee.

If the Supplier fails to deliver the documents as required by Paragraphs 0 and 0 above within 30 days of request then CCS shall be entitled to terminate this DPS Contract without liability and the Buyer shall be entitled to terminate the Order Contract without liability.

Where the CCS has procured a DPS Guarantee from the Supplier pursuant to Paragraph 0 CCS may terminate this DPS Contract by issuing a Termination Notice to the Supplier where:

the DPS Guarantor withdraws the DPS Guarantee for any reason whatsoever;

the DPS Guarantor is in breach or anticipatory breach of the DPS Guarantee;

an Insolvency Event occurs in respect of the DPS Guarantor;

the DPS Guarantee becomes invalid or unenforceable for any reason whatsoever; or

the Supplier fails to provide the documentation required by Paragraph 0 by the date so specified by the CCS;

and in each case the DPS Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to CCS.

Notwithstanding Clause 19 (Other people's rights in this contract), this Schedule (Guarantee) is intended to confer benefits on Buyers and is intended to be enforceable by Buyers by virtue of the CRTPA.]

 **Order Guarantee**

Where a Buyer has notified the Supplier that the award of the Order Contract by the Buyer shall be conditional upon receipt of a valid Order Guarantee, then, on or prior to the execution of the Order Contract, as a condition for the award of that Order Contract, the Supplier shall deliver to the Buyer:

an executed Order Guarantee from an Order Guarantor; and

a certified copy extract of the board minutes and/or resolution of the Order Guarantor approving the execution of the Order Guarantee.

Where a Buyer has procured an Order Guarantee from the Supplier under Paragraph 0 above, the Buyer may terminate the Order Contract for Material Default where:

the Order Guarantor withdraws the Order Guarantee for any reason whatsoever;

the Order Guarantor is in breach or anticipatory breach of the Order Guarantee;

an Insolvency Event occurs in respect of the Order Guarantor;

the Order Guarantee becomes invalid or unenforceable for any reason whatsoever; or

the Supplier fails to provide the documentation required by Paragraph 0 by the date so specified by the Buyer;

and in each case the Order Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer.]

**Annex 1 – Form of Guarantee**

**NOT REQUIRED**

**[Insert** name of the Guarantor]

**- and -**

**[Insert** name of the Beneficiary**]**

**DEED OF GUARANTEE**

**Joint Schedule 10 (Rectification Plan)**

|  |
| --- |
| **Request for [Revised] Rectification Plan** |
| Details of the Default: | [**Guidance:** Explain the Default, with clear schedule and clause references as appropriate] |
| Deadline for receiving the [Revised] Rectification Plan: | [**add** date (minimum 10 days from request)] |
| Signed by [CCS/Buyer] : |  | Date: |  |
| **Supplier [Revised] Rectification Plan** |
| Cause of the Default | [**add** cause] |
| Anticipated impact assessment:  | [**add** impact] |
| Actual effect of Default: | [**add** effect] |
| Steps to be taken to rectification: | **Steps** | **Timescale**  |
| 1. | [date] |
| 2. | [date] |
| 3. | [date] |
| 4. | [date] |
| […] | [date] |
| Timescale for complete Rectification of Default  | [X] Working Days  |
| Steps taken to prevent recurrence of Default | **Steps** | **Timescale**  |
| 1. | [date] |
| 2. | [date] |
| 3. | [date] |
| 4. | [date] |
| […] | [date] |
| Signed by the Supplier: |  | Date: |  |
| **Review of Rectification Plan** [CCS/Buyer] |
| Outcome of review  | [Plan Accepted] [Plan Rejected] [Revised Plan Requested] |
| Reasons for Rejection (if applicable)  | [**add** reasons] |
| Signed by [CCS/Buyer] |  | Date: |  |

**Joint Schedule 11 (Processing Data)**

**Status of the Controller**

* 1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
		1. “Controller” in respect of the other Party who is “Processor”;
		2. “Processor” in respect of the other Party who is “Controller”;
		3. “Joint Controller” with the other Party;
		4. “Independent Controller” of the Personal Data where there other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 *(Processing Personal Data)* which scenario they think shall apply in each situation.

**Where one Party is Controller and the other Party its Processor**

* 1. Where a Party is a Processor, the only processing that it is authorised to do is listed in Annex 1 *(Processing Personal Data*) by the Controller.
	2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
	3. 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:
		1. a systematic description of the envisaged Processing and the purpose of the Processing;
		2. an assessment of the necessity and proportionality of the Processing in relation to the Services;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
	4. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
		1. Process that Personal Data only in accordance with Annex 1 *(Processing Personal Data*), 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;
		2. ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms*,* 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:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event;
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that :
			1. the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 *(Processing Personal Data*));
			2. 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:
				1. are aware of and comply with the Processor’s duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*);
				2. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
				3. 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 the Contract; and
				4. have undergone adequate training in the use, care, protection and handling of Personal Data;
		4. 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; and
		5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
	5. Subject to paragraph 7 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
		1. receives a Data Subject Request (or purported Data Subject Request);
		2. receives a request to rectify, block or erase any Personal Data;
		3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
		4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
		5. 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
		6. becomes aware of a Data Loss Event.
	6. The Processor’s obligation to notify under paragraph 6 of this Joint Schedule 11 shall include the provision of further information to the Controller in phases, as details become available.
	7. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
		1. the Controller with full details and copies of the complaint, communication or request;
		2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
		3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as requested by the Controller following any Data Loss Event; and/or
		5. 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.
	8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
		1. the Controller determines that the Processing is not occasional;
		2. 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
		3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.
	10. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
	11. Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
		1. notify the Controller in writing of the intended Subprocessor and Processing;
		2. obtain the written consent of the Controller;
		3. enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
		4. provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
	12. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
	13. The Relevant Authority may, at any time on not less than 30 Working Days’ notice, revise this Joint Schedule 11 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 the Contract).
	14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Relevant Authority may on not less than 30 Working Days’ notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Where the Parties are Joint Controllers of Personal Data**

* 1. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11 (*Processing Data*).

**Independent Controllers of Personal Data**

* 1. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
	2. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
	3. Where a Party has provided Personal Data to the other Party in accordance with paragraph 7 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
	4. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
	5. The Parties shall only provide Personal Data to each other:
		1. to the extent necessary to perform their respective obligations under the Contract;
		2. in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
		3. where it has recorded it in Annex 1 *(Processing Personal Data).*
	6. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
	7. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
	8. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract **(“Request Recipient”)**:
		1. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
		2. where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
			1. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
			2. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
	9. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
		1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
		2. implement any measures necessary to restore the security of any compromised Personal Data;
		3. work with the other Party to make any required notifications to the Information Commissioner’s Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
		4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
	10. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 *(Processing Personal Data).*
	11. Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the Contract which is specified in Annex 1 *(Processing Personal Data)*.
	12. Notwithstanding the general application of paragraphs 2 to 15 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs16 to 27 of this Joint Schedule 11.

Order Schedule 1 (Transparency Reports)

1. The Supplier recognises that the Buyer 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 this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.

1. Without prejudice to the Supplier's reporting requirements set out in the DPS Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
2. If the Buyer 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 Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
3. The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

**Annex A: List of Transparency Reports**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title**  | **Content**  | **Format**  | **Frequency**  |
| [Performance]  | [ ] | [ ] | [ ] |
| [Order Contract Charges]  | [ ] | [ ] | [ ] |
| [Key Subcontractors]  | [ ] | [ ] | [ ] |
| [Technical] | [ ] | [ ] | [ ] |
| [Performance management] | [ ] | [ ] | [ ] |

**Order Schedule 2 (Staff Transfer)**

**Guidance note:** Buyers will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), or D3 (LGPS)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department’s Employment Law Group]

**Definitions**

In this Schedule, the following words have the following meanings and they shall supplement Joint Schedule 1  (Definitions):

|  |  |
| --- | --- |
| **"Employee Liability"** | 1. all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:
	1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
 |
|  | * 1. unfair, wrongful or constructive dismissal compensation;
 |
|  | * 1. compensation for discrimination on grounds of  sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity  or sexual orientation or claims for equal pay;
 |
|  | * 1. compensation for less favourable treatment of part-time workers or fixed term employees;
 |
|  | * 1. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
 |
|  | * 1. claims whether in tort, contract or statute or otherwise;
 |
|  | any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| **"Former Supplier"** | a supplier supplying the Deliverables to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Deliverables (or any part of the Deliverables) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor); |
| **"Partial Termination"** | the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract ) or 10.6 (When the Supplier can end the contract); |
| **"Relevant Transfer"** | a transfer of employment to which the Employment Regulations applies; |
| **"Relevant Transfer Date"** | in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D: Pensions, shall include the Commencement Date, where appropriate; |
| **"Supplier's Final Supplier Personnel List"** | a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date; |
| **"Supplier's Provisional Supplier Personnel List"** | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |
| **"Staffing Information"** | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:(a) their ages, dates of commencement of employment or engagement, gender and place of work; |
|  | (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; |
|  | (c) the identity of the employer or relevant contracting Party; |
|  | (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; |
|  | (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; |
|  | (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; |
|  | (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); |
|  | (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;  |
|  | (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and |
|  | (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations; |
| **"Term"** | the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract; |
| **"Transferring Buyer Employees"** | those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date; |
| **"Transferring Former Supplier Employees"** | in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date. |

**INTERPRETATION**

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

**Which parts of this Schedule apply**

Only the following parts of this Schedule shall apply to this Order Contract:

* + Part C (No Staff Transfer On Start Date)
	+ Part D (Pensions)
	+ Part E (Staff Transfer on Exit)

**Part C: No Staff Transfer on the Start Date**

1. **What happens if there is a staff transfer**

The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.

Subject to Paragraphs 0, 0 and 0, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:

the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;

the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;

if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

if after the period referred to in Paragraph 0 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 0 to 0:

the Buyer will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 0; and

the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 0.

The indemnities in Paragraph 0 shall not apply to any claim:

for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or

any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure

The indemnities in Paragraph 0 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.

If the Supplier and/or the Sub-contractor does not comply with Paragraph 0, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

**Limits on the Former Supplier’s obligations**

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**Part D: Pensions**

1. **Definitions**

In this Part D, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

|  |  |
| --- | --- |
| **"Actuary"** | a Fellow of the Institute and Faculty of Actuaries; |
| **"Admission Agreement"** | means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires; |
| **"Broadly Comparable"** | 1. in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and
 |
|  | 1. in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,

and "**Broad Comparability**" shall be construed accordingly; |
| **"CSPS"** | the schemes as defined in Annex D1 to this Part D;  |
| **"Fair Deal Employees"** | those:1. Transferring Buyer Employees; and/or
 |
|  | 1. Transferring Former Supplier Employees; and/or
 |
|  | 1. employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs **Error! Reference source not found.** of Parts A or B or Paragraph 0 of Part C;
 |
|  | 1. where the Former Supplier becomes the Supplier those employees;
 |
|  | who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer; |
| **"Fair Deal Schemes"** | means the relevant Statutory Scheme or a Broadly Comparable pension scheme; |
| **"Fund Actuary"** | means Fund Actuary as defined in Annex D3 to this Part D; |
| **"LGPS"** | the schemes as defined in Annex D3 to this Part D; |
| **"NHSPS"** | the schemes as defined in Annex D2 to this Part D; |
| **"New Fair Deal"** | the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for Staff Pensions: Staff Transfer from Central Government*" issued in October 2013 including:1. any amendments to that document immediately prior to the Relevant Transfer Date; and
 |
|  | 1. any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and
 |
| **"Statutory Schemes"** | means the CSPS, NHSPS or LGPS. |

**Supplier obligations to participate in the pension schemes**

In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

The Supplier undertakes:

to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

**Supplier obligation to provide information**

The Supplier undertakes to the Buyer*:*

to provide all information which the Buyermay reasonably request concerning matters referred to in this Part D as expeditiously as possible; and

not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

**Indemnities the Supplier must give**

The Supplier undertakes to the Buyerto indemnify and keep indemnified CCS, NHS Pensions the Buyerand/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.

The Supplier hereby indemnifies the CCS, NHS Pensions, the Buyerand/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or

arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.

The indemnities in this Part D and its Annexes:

shall survive termination of this Contract; and

shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

**What happens if there is a dispute**

The Dispute Resolution Procedure will not apply to this Part D and any dispute between the CCS and/or the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Buyer and/or the Supplier be referred to an independent Actuary:

who will act as an expert and not as an arbitrator;

whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and

whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

**Other people’s rights**

The Parties agree Clause 19 (Other people’s rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.

**What happens if there is a breach of this Part D**

The Supplier agrees to notify the Buyershould it breach any obligations it has under this Part D and agrees that the Buyershall be entitled to terminate its Contract for material Default in the event that the Supplier:

commits an irremediable breach of any provision or obligation it has under this Part D; or

commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

**Transferring New Fair Deal Employees**

Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:

consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and

procure that the employer to which the Fair Deal Employees are transferred (the **"New Employer"**) complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

**What happens to pensions if this Contract ends**

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

**Broadly Comparable Pension Schemes**

If either:

the terms of any of Paragraphs 0 of Annex D1: CSPS, 0 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or

the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 0, the Supplier shall (and shall procure that any of its Sub-contractors shall):

supply to the Buyer details of its (or its Sub-contractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;

fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme’s Actuary or by the Government Actuary’s Department for the period ending on the Service Transfer Date;

instruct any such Broadly Comparable pension scheme’s Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is terminated;

allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service (**"Shortfall"**), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier; and

indemnify CCS and/or the Buyer and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 0 above.

**Annex D1:**

**Civil Service Pensions Schemes (CSPS)**

1. **Definitions**

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"CSPS Admission Agreement"** | an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services; |
| **"CSPS Eligible Employee"** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; |
| **"CSPS"** | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014. |

**Access to equivalent pension schemes after transfer**

The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

**Annex D2: NHS Pension Schemes**

1. **Definitions**

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Direction Letter"** | an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Eligible Employees; |
| **"NHSPS Eligible Employees"** | each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either: |
|  | 1. their employment with the Buyer*,* an NHS Body or other employer which participates automatically in the NHSPS; or
 |
|  | 1. their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),
 |
|  | and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services). |
|  | For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;  |
| **"NHS Body"** | has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012; |
| **"NHS Pensions"** | NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS; |
| **"NHSPS"** | the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations; |
| **"NHS Pension Scheme Arrears"** | any failure on the part of the Supplier or its Sub-contractors (if any) to pay employer’s contributions or deduct and pay across employee’s contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees; |
| **"NHS Pension Scheme Regulations"** | as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time; |
| **"NHS Premature Retirement Rights"** | rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time; |
| **"Pension Benefits"** | any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; and |
| **"Retirement Benefits Scheme"** | a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004. |

**Membership of the NHS Pension Scheme**

In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

The Supplier must supply to the Buyerby or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.

The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.

Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

The Supplier will (and will procure that its Sub-contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-contractor’s) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

**Access to NHS Pension Schemes after transfer**

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

**Continuation of early retirement rights after transfer**

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

**What the buyer do if the Supplier breaches its pension obligations**

The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Sub-contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter.

If the Buyer is entitled to terminate the Contract or the Supplier (or its Sub-contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, theBuyermay in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-contractors.

In addition to the Buyer'sright to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

**Compensation when pension scheme access can’t be provided**

If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:

membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or

access to a Broadly Comparable pension scheme,

the Buyermay in its sole discretion permit the Supplier (or any of its Sub-contractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Buyerdetermining whether the level of compensation offered is reasonable in the circumstances.

This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer’s right to terminate the Contract.

**Indemnities that a Supplier must give**

The Supplier must indemnify and keep indemnified the CCS, the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

**Sub-Contractors**

If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:

if the Supplier has secured a Direction Letter, the Sub-contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Buyer receives a complete copy of each such Sub-contractor direction letter as soon as reasonably practicable; or

if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 below (Bulk Transfer Obligations in relation to any Broadly Comparable Scheme) shall apply.

The Supplier shall procure that each Sub-contractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-contractor that are identical to the indemnities set out in Paragraph 7 of this Annex B. Where a Sub-contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

**Annex D3:**

**Local Government Pension Schemes (LGPS)**

**[Guidance:** Note the LGPS unlike the CSPS & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Authority, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether CCS and or the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

1. **Definitions**

In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| "**Administering Authority**" | in relation to **the Fund [insert name],**the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013; |
| "**Fund Actuary**" | the actuary to a Fund appointed by the Administering Authority of that Fund; |
| "**Fund**" | **[insert name], a pension fund within the LGPS;** |
| "**LGPS**" | the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme; |
| "**LGPS Admission Agreement**" | an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013; |
| "**LGPS Admission Body**" | an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013); |
| "**LGPS Eligible Employees**" | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and |
| "**LGPS Regulations**" | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS. |

**Supplier must become a LGPS admission body**

Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.

The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.

The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

**Right of set-off**

The Buyershall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

**Supplier ceases to be an LGPS Admission Body**

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

**Discretionary benefits**

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer’s written policy in relation to such benefits at the time of the Relevant Transfer Date.

**Annex D4: Other Schemes**

 **[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPS & NHSPS]

**Part E: Staff Transfer on Exit**

1. **Obligations before a Staff Transfer**

The Supplier agrees that within 20 Working Days of the earliest of:

receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;

receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;

the date which is 12 Months before the end of the Term; and

receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).

The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 0 and 0 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 0 and 0 shall be true and accurate in all material respects at the time of providing the information.

From the date of the earliest event referred to in Paragraph 0, 0 and 0, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):

not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);

not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;

not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor;

give the Buyer and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;

 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;

promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;

not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));

not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;

fully fund any Broadly Comparable pension schemes set up by the Supplier;

maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);

promptly provide to the Buyer such documents and information mentioned in Paragraph 0 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and

fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-contractor in the provision of the Services on the expiry or termination of this Contract.

On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:

the numbers of employees engaged in providing the Services;

the percentage of time spent by each employee engaged in providing the Services;

the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and

a description of the nature of the work undertaken by each employee by location.

The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

the most recent month's copy pay slip data;

details of cumulative pay for tax and pension purposes;

details of cumulative tax paid;

tax code;

details of any voluntary deductions from pay; and

bank/building society account details for payroll purposes.

**Staff Transfer when the contract ends**

A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).

Subject to Paragraph 0, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

The indemnity in Paragraph 0 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.

Subject to Paragraphs 0 and 0, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then.

the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-contractor;

if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;

if after the period referred to in Paragraph 0 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-contractor's compliance with Paragraphs 0 to 0 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 0.

The indemnity in Paragraph 0 shall not apply to:

(a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or

(b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure.

The indemnity in Paragraph 0 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.

If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 0, such person shall be treated as a Transferring Supplier Employee and Paragraph 0 shall cease to apply to such person.

The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

Subject to Paragraph 0, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

The indemnity in Paragraph 0 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier’s Final Supplier Personnel List in accordance with Paragraph 0 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

**Order Schedule 4 (Order Tender)**

**Guidance for Buyers:** If the Supplier’s bid has additional detail that you would like included in the contract, insert the Supplier’s bid here.]

[Insert Order Tender Here]

**Order Schedule 5 (Pricing Details)**

|  |
| --- |
| **Deliverables in accordance with Statement of Requirements** |
| **Item Number** | **Description** | **Delivery Date** | **Unit of Measurement** | **Quantity** | **Firm Price (£) Ex VAT –** **Per Item** | **Firm Price (£) Ex VAT** **-Total** |
| 1 | Provision of **TWO** SFIA 2 Cyber Security Administration workers performing duties as per Statement of Requirements, inclusive of professional indemnity.  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  |
| The quantity of each item are expected numbers and not a guarantee of amounts required or due. Quantities ordered under the contract may be higher or lower based on Authority requirements during the contract period. Payments will be made monthly following invoice of actual delivery. | **Contract Maximum Limit of Liability****Value** | £289,011 |

|  |  |
| --- | --- |
| **Item Number** | **Consignee Address (XY code only)** |
| 1 | Navy Command HQ  |
| **Item Number** | **Payment Schedule** |
| 1 | Payment to be made following Authority acceptance of monthly invoice containing days worked and worker grade as per SoR.  |

All prices stated are firm prices, to be paid in £ (GBP/Pounding Sterling), not subject to any increase or exchange rates.

The quantity of each item are expected numbers and not a guarantee of amounts required or due.

Quantities ordered under the contract may be higher or lower based on Authority requirements during the contract period.

The contract value will be a limit of liability under which the Authority shall be entitled to purchase any goods and/or services listed at the firm prices set, dependent on Authority requirements.

The Firm Price set for each item shall be the total maximum price the Contractor shall charge for the delivery of the goods/services covered within that item. This shall include, but not be limited to:

• Any direct or indirect costs

• Any labour costs or personnel salaries, pensions or contributions

• Any costs for manufacture or provision of goods/services

• Any costs for delivery to the Authority

• Any fuel costs

• Any related travel and subsistence

• Any packaging

• Any import costs or charges

• Any implementation or exit costs

• Any sub-contractor costs

• Any IT or system related costs

• Any costs required to provide Authority access to systems or accounts

• Worker professional indemnity insurance

**Order Schedule 6 (ICT Services)**

1. **Definitions**
	1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Buyer Software"** | any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables; |
| **"Buyer System"** | the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Order Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables; |
| **“Commercial off the shelf Software” or “COTS Software”** | non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms; |
| **"Defect"** | any of the following: any error, damage or defect in the manufacturing of a Deliverable; orany error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or |
|  | any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Order Contract; orany failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Order Contract; |
| **"ICT Environment"** | the Buyer System and the Supplier System; |
| **"Licensed Software"** | all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Order Contract, including any COTS Software; |
| **"New Release"** | an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item; |
| **"Open Source Software"** | computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge; |
| **"Operating Environment"** | means the Buyer System and any premises (including the Buyer Premises, the Supplier’s premises or third party premises) from, to or at which:* 1. the Deliverables are (or are to be) provided; or
	2. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or
	3. where any part of the Supplier System is situated;
 |
| **"Quality Plans"** | has the meaning given to it in paragraph 6.1 of this Schedule; |
| **"Sites"** | has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Order Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place; |
| **"Software"** | Specially Written Software, COTS Software and non-COTS Supplier and third party Software; |
| **"Software Supporting Materials"** | has the meaning given to it in paragraph 8.1 of this Schedule; |
| **"Source Code"** | computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| **"Specially Written Software"** | any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR; |
| **"Supplier System"** | the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System); |

1. **When this Schedule should be used**
	1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT services which are part of the Deliverables.
2. **Buyer due diligence requirements**
	1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
		1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
		2. operating processes and procedures and the working methods of the Buyer;
		3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
		4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
	2. The Supplier confirms that it has advised the Buyer in writing of:
		1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the Deliverables;
		2. the actions needed to remedy each such unsuitable aspect; and
		3. a timetable for and the costs of those actions.
3. **Software warranty**
	1. The Supplier represents and warrants that:
		1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier’s obligations under this Order Contract including the receipt of the Deliverables by the Buyer;
		2. all components of the Specially Written Software shall:
			1. be free from material design and programming errors;
			2. perform in all material respects in accordance with the relevant specifications and Documentation; and
			3. not infringe any IPR.
4. **Provision of ICT Services**
	1. The Supplier shall:
		1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with any interface requirements of the Buyer specified in this Order Contract and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
		2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
		3. ensure that the Supplier System will be free of all encumbrances;
		4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Order Contract;
		5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables;
5. **Standards and Quality Requirements**
	1. The Supplier shall, where specified by the Buyer as part of their Order Procedure, and in accordance with agreed timescales, develop quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**")**.**
	2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
	3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
	4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Order Contract Period:
		1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Order Contract;
		2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
		3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.
6. **ICT Audit**
	1. The Supplier shall allow any auditor access to the Supplier premises to:
		1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
		2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
		3. review the Supplier’s quality management systems including all relevant Quality Plans.
7. **Intellectual Property Rights in ICT**
	1. **Assignments granted by the Supplier: Specially Written Software**
		1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
			1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
			2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
		2. The Supplier shall:
			1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
			2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
			3. without prejudice to paragraph 8.1.2.2, provide full details to the Buyer of any of the Supplier’s Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier’s Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.
		3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.
	2. **Licences for non-COTS IPR from the Supplier and third parties to the Buyer**
		1. Unless the Buyer gives its Approval the Supplier must not use any:
8. of its own Existing IPR that is not COTS Software;
9. third party software that is not COTS Software
	* 1. Where the Buyer Approves the use of the Supplier’s Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer’s (or, if the Buyer is a Central Government Body, any other Central Government Body’s) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Order Contract Period and after expiry of the Order Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.
		2. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 8.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:
			1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and
			2. only use such third party IPR as referred to at paragraph 8.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.
		3. Where the Supplier is unable to provide a license to the Supplier’s Existing IPR in accordance with Paragraph 8.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.
		4. The Supplier may terminate a licence granted under paragraph 8.2.1 by giving at least thirty (30) days’ notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.
	1. **Licenses for COTS Software by the Supplier and third parties to the Buyer**
		1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
		2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
		3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 8.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licencee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
		4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:
			1. will no longer be maintained or supported by the developer; or
			2. will no longer be made commercially available
	2. **Buyer’s right to assign/novate licences**
		1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 8.2 (to:
			1. a Central Government Body; or
			2. 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 Buyer.
		2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 8.2.
	3. **Licence granted by the Buyer**
		1. The Buyer grants to the Supplier a licence to use the Specially Written Software i) during the Order Contract Period for the purpose of fulfilling its obligations under the Order Contract, and ii) after the Contract period on the terms set out in the Open Government Licence.
		2. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).
	4. **Open Source Publication**
		1. Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 8.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:
			1. suitable for publication by the Buyer as Open Source; and
			2. based on Open Standards (where applicable),

and the Buyer may, at its sole discretion, publish the same as Open Source.

* + 1. The Supplier hereby warrants that the Specially Written Software and the New IPR:
			1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;
			2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
			3. do not contain any material which would bring the Buyer into disrepute;
			4. can be published as Open Source without breaching the rights of any third party;
			5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and
			6. do not contain any Malicious Software.
		2. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:
			1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
			2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer’s ability to publish such other items or Deliverables as Open Source.
1. **Supplier-Furnished Terms**
	1. **Software Licence Terms**
		* 1. Terms for licensing of non-COTS third party software in accordance with Paragraph 8.2.3 are detailed in Annex A of this Order Schedule 6.
			2. Terms for licensing of COTS software in accordance with Paragraph 8.3 are detailed in Annex B of this Order Schedule 6.

**ANNEX A**

**Non-COTS Third Party Software Licensing Terms**

Not applicable.

**ANNEX B**

**COTS Licensing Terms**

Not Applicable

**Order Schedule 7 (Key Supplier Staff)**

1. The Annex 1 to this Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date.

2. The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.

3. The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.

4. The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:

4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);

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

4.3 the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.

5. The Supplier shall:

5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);

5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least [3] Months’ notice;

5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and

5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.

 6. The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

**Annex 1- Key Roles**

|  |  |  |
| --- | --- | --- |
| **Key Role** | **Key Staff** | **Contact Details** |
| Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  |
| Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  | Redacted under FOIA Section 43, Commercial interests  |
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**Order Schedule 8 (Business Continuity and Disaster Recovery)**

**BCDR Plan**

At the Supplier’s request, the Customer shall provide the Supplier with a copy of its Business Continuity & Disaster Recovery (“BCDR”) Plan.

The Supplier shall develop a BCDR Plan and ensure that it is linked and integrated with the Buyer’s BCDR Plan and the Supplier shall review and amend its BCDR Plan on a regular basis and as soon as is reasonably practicable on receipt of an amended Buyer BCDR Plan from the Buyer.

The Supplier shall ensure that its Sub-Contractor’s BCDR Plans are integrated with the Supplier’s BCDR Plan.

If there is a Disaster, the Parties shall, where applicable, implement their respective BCDR Plans and use all reasonable endeavours to re-establish their capacity to fully perform their obligations under this Order Contract. A Disaster will only relieve a Party of its obligations to the extent it constitutes a Force Majeure Event in accordance with Clause 20 (Circumstances Beyond Your Control).

**Order Schedule 9 (Security)**

**Part B: Long Form Security Requirements**

1. **Definitions**

In this Schedule the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Breach of Security"** | means the occurrence of:any unauthorised access to or use of the Goods and/or Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/orthe loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,in either case as more particularly set out in the security requirements in the Security Policy where the Buyer has required compliance therewith in accordance with paragraph 3.4.3 d; |
| **"ISMS"** | the information security management system and process developed by the Supplier in accordance with Paragraph 0 (ISMS) as updated from time to time in accordance with this Schedule; and |
| **"Security Tests"** | tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security. |

**Security Requirements**

The Buyer and the Supplier recognise that, where specified in DPS Schedule 4 (DPS Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.

The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.

The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:

**Security Representative of the Buyer:** Redacted under FOIA Section 40, Personal Information

**Security Representative of the Supplier:** Redacted under FOIA Section 40, Personal Information

The Buyer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.

The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Government Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Government Data remains under the effective control of the Supplier at all times.

The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Buyer.

The Buyer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Buyer’s security provisions represents an unacceptable risk to the Buyer requiring immediate communication and co-operation between the Parties.

**Information Security Management System (ISMS)**

The Supplier shall develop and submit to the Buyer, within twenty (20) Working Days after the Start Date, an information security management system for the purposes of this Contract and shall comply with the requirements of Paragraphs 0 to 0.

The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

The Buyer acknowledges that;

If the Buyer has not stipulated during an Order Procedure that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier’s estate; and

Where the Buyer has stipulated that it requires a bespoke ISMS then the Supplier shall be required to present the ISMS for the Buyer’s Approval.

The ISMS shall:

if the Buyer has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Buyer’s Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract;

meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph 7;

at all times provide a level of security which:

is in accordance with the Law and this Contract;

complies with the Baseline Security Requirements;

as a minimum demonstrates Good Industry Practice;

where specified by a Buyer that has undertaken a Further Competition - complies with the Security Policy and the ICT Policy;

complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4)(<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>)

takes account of guidance issued by the Centre for Protection of National Infrastructure <https://www.cpni.gov.uk/>

complies with HMG Information Assurance Maturity Model and Assurance Framework (<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm>);

meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;

addresses issues of incompatibility with the Supplier’s own organisational security policies; and

complies with ISO/IEC27001 and ISO/IEC27002 in accordance with Paragraph 7;

document the security incident management processes and incident response plans;

document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Deliverables of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Buyer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and

be certified by (or by a person with the direct delegated authority of) a Supplier’s main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Security Management Plan).

Subject to Paragraph 2 the references to Standards, guidance and policies contained or set out in Paragraph 3.4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.

If the bespoke ISMS submitted to the Buyer pursuant to Paragraph 0 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Buyer. If the Buyer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph 0 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 0 to 0 shall be deemed to be reasonable.

Approval by the Buyer of the ISMS pursuant to Paragraph 0 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

**Security Management Plan**

Within twenty (20) Working Days after the Start Date, the Supplier shall prepare and submit to the Buyer for Approval in accordance with Paragraph 4.3 fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 0.

The Security Management Plan shall:

be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);

comply with the Baseline Security Requirements and, where specified by the Buyer in accordance with paragraph 3.4.3 d, the Security Policy;

identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;

detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Buyer’s Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;

unless otherwise specified by the Buyer in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Buyer’s Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;

set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule (including the requirements set out in Paragraph 0);

demonstrate that the Supplier’s approach to delivery of the Deliverables has minimised the Buyer and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, ‘platform as a service’ offering from the G-Cloud catalogue);

set out the plans for transitioning all security arrangements and responsibilities from those in place at the Start Date to those incorporated in the ISMS within the timeframe agreed between the Parties;

set out the scope of the Buyer System that is under the control of the Supplier;

be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and

be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

If the Security Management Plan submitted to the Buyer pursuant to Paragraph 0 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Buyer of the Security Management Plan. If the Buyer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 0 shall be deemed to be reasonable.

Approval by the Buyer of the Security Management Plan pursuant to Paragraph 0 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

**Amendment of the ISMS and Security Management Plan**

The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:

emerging changes in Good Industry Practice;

any change or proposed change to the Supplier System, the Deliverables and/or associated processes;

any new perceived or changed security threats;

where required in accordance with paragraph 3.4.3 d, any changes to the Security Policy;

any new perceived or changed security threats; and

any reasonable change in requirement requested by the Buyer.

The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:

suggested improvements to the effectiveness of the ISMS;

updates to the risk assessments;

proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and

suggested improvements in measuring the effectiveness of controls.

Subject to Paragraph 0, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 0, a Buyer request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Buyer.

The Buyer may, acting reasonably, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

**Security Testing**

The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Buyer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier’s ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

The Buyer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test.

Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer’s test adversely affects the Supplier’s ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer’s test.

Where any Security Test carried out pursuant to Paragraphs 0 or 0 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Buyer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Buyer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Buyer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Baseline Security Requirements) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Buyer.

If any repeat Security Test carried out pursuant to Paragraph 0 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

**Complying with the ISMS**

The Buyer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy where such compliance is required in accordance with paragraph 3.4.3 d.

If, on the basis of evidence provided by such security audits, it is the Buyer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy are not being achieved by the Supplier, then the Buyer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then the Buyer shall have the right to obtain an independent audit against these standards in whole or in part.

If, as a result of any such independent audit as described in Paragraph the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Buyer in obtaining such audit.

**Security Breach**

Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.

Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 0, the Supplier shall:

immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:

minimise the extent of actual or potential harm caused by any Breach of Security;

remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Buyer Property and/or Buyer Assets and/or ISMS to the extent that this is within the Supplier’s control;

apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier’s ability to provide the Deliverables so as to meet the relevant Service Level Performance Indicators, the Supplier shall be granted relief against any resultant under-performance for such period as the Buyer, acting reasonably, may specify by written notice to the Supplier;

prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and

supply any requested data to the Buyer (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Buyer’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and

as soon as reasonably practicable provide to the Buyer full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.

In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Buyer.

**Vulnerabilities and fixing them**

The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Buyer’s information.

The severity of threat vulnerabilities for COTS Software shall be categorised by the Supplier as ‘Critical’, ‘Important’ and ‘Other’ by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

the ‘National Vulnerability Database’ ‘Vulnerability Severity Ratings’: ‘High’, ‘Medium’ and ‘Low’ respectively (these in turn are aligned to CVSS scores as set out by NIST http://nvd.nist.gov/cvss.cfm); and

Microsoft’s ‘Security Bulletin Severity Rating System’ ratings ‘Critical’, ‘Important’, and the two remaining levels (‘Moderate’ and ‘Low’) respectively.

The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as ‘Critical’ within 14 days of release, ‘Important’ within 30 days of release and all ‘Other’ within 60 Working Days of release, except where:

the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;

the application of a ‘Critical’ or ‘Important’ security patch adversely affects the Supplier’s ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or

the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

The Specification and Mobilisation Plan (if applicable) shall include provisions for major version upgrades of all COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the ‘n-1 version’) throughout the Term unless:

where upgrading such COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or

is agreed with the Buyer in writing.

The Supplier shall:

implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Contract Period;

pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 0;

from the date specified in the Security Management Plan provide a report to the Buyer within five (5) Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;

remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and

inform the Buyer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.

If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Supplier shall immediately notify the Buyer.

A failure to comply with Paragraph 0 shall constitute a Default, and the Supplier shall comply with the Rectification Plan Process.

**Part B – A****nnex 1:**

**Baseline security requirements**

1. **Handling Classified information**

The Supplier shall not handle Buyer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Buyer.

**End user devices**

When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("CESG") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("CPA").

Devices used to access or manage Government Data and services must be under the management authority of Buyer or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Buyer. Unless otherwise agreed with the Buyer in writing, all Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance ([https://www.ncsc.gov.uk/guidance/end-user-device-security)](https://www.ncsc.gov.uk/guidance/end-user-device-security%29). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Buyer and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Buyer.

**Data Processing, Storage, Management and Destruction**

The Supplier and Buyer recognise the need for the Buyer’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Buyer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.

The Supplier shall agree any change in location of data storage, processing and administration with the Buyer in accordance with Clause 14 (Data protection).

The Supplier shall:

provide the Buyer with all Government Data on demand in an agreed open format;

have documented processes to guarantee availability of Government Data in the event of the Supplier ceasing to trade;

securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and

securely erase any or all Government Data held by the Supplier when requested to do so by the Buyer.

**Ensuring secure communications**

The Buyer requires that any Government Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA.

The Buyer requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

**Security by design**

The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Government Data.

When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<https://www.ncsc.gov.uk/articles/cesg-certification-ia-professionals-and-guidance-certification-ia-professionals-documents>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).

**Security of Supplier Staff**

Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.

The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Government Data.

The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Government Data except where agreed with the Buyer in writing.

All Supplier Staff that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually.

Where the Supplier or Subcontractors grants increased ICT privileges or access rights to Supplier Staff, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

**Restricting and monitoring access**

The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the ‘principle of least privilege’, users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

**Audit**

The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:

Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.

Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

The Supplier shall retain audit records collected in compliance with this Paragraph 0 for a period of at least 6 Months.

**Part B – Annex 2 - Security Management Plan**

Security Management as per Order Schedule 9 Part B and Security Aspects Letter up to SECRET.

Redacted under FOIA Section 23, information supplied by, or relating to, bodies dealing with security matters

Order Schedule 10 (Exit Management)

1. Within 20 (twenty) working days of the Start Date the Supplier must provide for the Buyer’s Approval an exit plan which ensures continuity of service and which the Supplier will follow at the end of the Order Contract. The Buyer shall not unreasonably withhold Approval of the draft provided that the Supplier shall incorporate the Buyer’s reasonable requirements in it

2. The Supplier must ensure that the exit plan clearly sets out the Supplier’s methodology for achieving an orderly transition of the Services from the Supplier to the Buyer or its Replacement Supplier at the expiry or if the Order Contract ends before the scheduled expiry.

3. The exit plan should set out full details of timescales, activities and roles and responsibilities of the Parties for:

● the transfer to the Buyer of any technical information, instructions, manuals and code reasonably required by the Buyer to enable a smooth migration from the Supplier

● the strategy for export and migration of Buyer data from any relevant Supplier system to the Buyer or a Replacement Supplier, including conversion to open standards or other standards required by the Buyer

● the transfer of New IPR items to the Buyer or a Replacement Supplier

● the testing and assurance strategy for exported Buyer data

● if relevant, TUPE-related activity to comply with the TUPE regulations

● any other activities and information which are reasonably required to ensure continuity of service during the exit period and an orderly transition to the Buyer or a Replacement Supplier.

Order Schedule 13 (Implementation Plan and Testing)

Part A – Implementation Plan

1. **Agreeing the Implementation Plan**
	1. The Supplier’s tendered draft Implementation Plan is at Annex 1 to this Part A of Order Schedule 13. The Supplier will provide an updated, fully developed draft for Approval within [TBC] days of the Order Contract Start Date.
	2. The updated draft must contain enough detail for effective management of Order Contract implementation.
	3. The Buyer shall not unreasonably withhold Approval of the updated draft provided that the Supplier shall incorporate the Buyer’s reasonable requirements in it.
2. **Following the Implementation Plan**
	1. The Supplier shall perform its obligations in respect of Delivery and, where relevant, Testing of the Deliverables in accordance with the Approved Implementation Plan.
	2. Changes to any Milestones, Milestone Dates, Milestone Payments or Delay Payments shall only be made via the Variation Procedure.
	3. Where the Supplier is responsible for the failure to achieve a Milestone by the date specified in the Approved Implementation Plan this shall constitute a material Default.
3. **Delays**
	1. If the Supplier becomes aware that there is, or is likely to be, a Delay it shall;
* Notify the Buyer in writing within 2 Working Days of becoming aware, explaining the likely impact of the Delay
* Use all reasonable endeavours to mitigate the effects of the Delay, including complying with the Buyer’s reasonable instructions

**Annex 1 Draft Implementation Plan**

Implementation plan to be agreed between customer and supplier upon contract commencement.

Part B – Testing

In this Part B to Order Schedule 13, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **“Test Period”** | 1. the period specified in Part A to Order Schedule 13 during which Testing shall be carried out.
 |
| **"Test Plan"** | 1. a plan for the Testing of the Deliverables to demonstrate compliance with Contract requirements;
 |
| **“Test Report”** | 1. a test report produced by the Supplier in accordance with Paragraph 3.3 of this Part B to Order Schedule 13;
 |
| **“Test Success Criteria”** | 1. the criteria specified in the Test Plan agreed pursuant to Part B of Order Schedule 13 that the relevant Deliverables must satisfy for the relevant Test to be recorded as successful.
 |

All Tests will be carried out in accordance with the Test Plan.

The Supplier shall submit each Deliverable for the relevant Testing no later than the date specified in the Contract for the Test Period to begin.

The Supplier shall submit a draft Test Plan for Approval no later than **[Not applicable**] days after the Start Date.

The Test Plan will include:

* An overview of how Testing will be carried out
* Specific details of each Test to be carried out to demonstrate that the Buyer’s requirements are satisfied
* The Test Success Criteria for all Tests
* A timetable for Testing over the Test Period, this to be compliant with any Implementation Plan
* The process for recording the conduct and results of Testing
* The responsibilities of the Parties
* A categorisation scheme for test issues eg critical/serious/minor

The Buyer shall not unreasonably withhold Approval of the Test Plan provided that the Supplier shall implement the Buyer’s reasonable requirements in the plan.

Unless specified in the Test Plan the Supplier shall be responsible for carrying out the Testing detailed in the plan.

The Buyer may require that a Buyer representative witnesses the conduct of the Tests.

No later than **[Not applicable**] days after the completion of the scheduled Test Period the Supplier shall provide the Buyer with a Test Report setting out:

* An overview of Testing carried out
* Details of each Test carried out together with the result, indicating if the success criteria were satisfied
* Details of any scheduled Tests that were not carried out
* A list of all outstanding Test issues

Where by the end of the scheduled Test Period the Testing process has demonstrated to the Buyer’s satisfaction that the Test Success Criteria have been met then the Buyer shall notify the Supplier in writing that the Testing process has been satisfactorily completed.

Where as a result of a Supplier default the Testing process has not by the end of the scheduled Test Period demonstrated to the Buyer’s satisfaction that the Test Success Criteria have been met then the Buyer may:

* Direct the Supplier to repeat any unsuccessful Test or undertake any scheduled Test not thus far undertaken to give the Supplier an opportunity to demonstrate that the outstanding issues detailed in the Test Report have been resolved; or
* Notify the Supplier that testing has been satisfactorily completed subject to rectification of outstanding issues within a period specified by the Buyer. Failure to rectify the relevant issues within the period specified shall be a material Default; or
* to reject the relevant Deliverables and to invoke Clause 3.2.12; or
* to reject the relevant Deliverables treating this as a material default and invoking the Buyer’s termination right under Clause 10.4.1

**Order Schedule 14 (Service Levels)**

**Definitions**

In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **“Critical Service Failure”** | Means a failure to meet a Service Level Threshold in respect of a Service Level |
| **"Service Credits"** | any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels; |
| **"Service Credit Cap"** | has the meaning given to it in the Order Form; |
| **"Service Level Failure"** | means a failure to meet the Service Level Performance Measure in respect of a Service Level; |
| **"Service Level Performance Measure"** | shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and |
| **"Service Level Threshold"** | shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule. |

**What happens if you don’t meet the Service Levels**

The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.

The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier’s failure to meet any Service Level Performance Measure.

The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

A Service Credit shall be the Buyer’s exclusive financial remedy for a Service Level Failure except where:

the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or

the Service Level Failure:

exceeds the relevant Service Level Threshold;

has arisen due to a Prohibited Act or wilful Default by the Supplier;

results in the corruption or loss of any Government Data; and/or

results in the Buyer being required to make a compensation payment to one or more third parties; and/or

the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (CCS and Buyer Termination Rights).

**Critical Service Level Failure**

On the occurrence of a Critical Service Level Failure:

any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

**Order Schedule 15 (Order Contract Management)**

1. **Definitions**
	1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Operational Board"** | the board established in accordance with paragraph 5.1 of this Schedule; |
| **"Project Manager"** | the manager appointed in accordance with paragraph 1 of this Schedule; |

1. **Project Management**
	1. The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
	2. The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
	3. Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.
2. **Role of the Supplier Contract Manager**
	1. The Supplier's Contract Manager shall be:
		1. the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
		2. able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be the delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;
		3. able to cancel any delegation and recommence the position himself; and
		4. replaced only after the Buyer has received notification of the proposed change.
	2. The Buyer may provide revised instructions to the Supplier's Contract Manager in regards to the Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
	3. Receipt of communication from the Supplier's Contract Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.
3. **Contract Risk Management**
	1. Both Parties shall pro-actively manage risks attributed to them under the terms of this Order Contract.
	2. The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
		1. the identification and management of risks;
		2. the identification and management of issues; and
		3. monitoring and controlling project plans.
	3. The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
	4. The Supplier will maintain a risk register of the risks relating to the Order Contract which the Buyer and the Supplier have identified.
4. **Role of the Operational Board**
	1. The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
	2. The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in the Order Form.
	3. In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
	4. Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member’s attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
	5. The purpose of the Operational Board meetings will be to review the Supplier’s performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

**Annex A: Contract Boards**

The Parties agree to operate the following boards at the locations and at the frequencies set out below: To be confirmed by customer upon contract commencement.

**Order Schedule 17 (MOD Terms)**

1. **Definitions**
	1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"MOD Terms and Conditions"** | the terms and conditions listed in this Schedule; |
| **"MOD Site"** | shall include any of Her Majesty's Ships or Vessels and Service Stations; |
| **"Officer in charge"** | shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments; |

1. **Access to MOD sites**
	1. The Buyer shall issue passes for those representatives of the Supplier who are approved for admission to the MOD Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Buyer and shall be surrendered on demand or on completion of the supply of the Deliverables.
	2. The Supplier's representatives when employed within the boundaries of a MOD Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of staff at that MOD Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
	3. The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a MOD Site. Sleeping accommodation and messing facilities, if required, may be provided by the Buyer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At MOD Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's staff for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Buyer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Buyer with other evidence relating to the costs of this Contract.
	4. Where the Supplier's representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in the Buyer Contract Details. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Buyer shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
	5. Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
	6. Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
	7. No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
	8. The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Buyer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Buyer shall be recovered from the Supplier
2. **DEFCONS and DEFFORMS**
	1. The DEFCONS and DEFORMS listed in Annex 1 to this Schedule are incorporated into this Contract.
	2. In the event of a conflict between any DEFCONs and DEFFORMS listed in the Order Form and the other terms in an Order Contract, the DEFCONs and DEFFORMS shall prevail.

**ANNEX 1 - DEFCONS & DEFFORMS**

The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/acquisition-operating-framework>.

The following MOD DEFCONs and DEFFORMs form part of this contract:

DEFCONs

|  |  |  |
| --- | --- | --- |
| **DEFCON No** | **Version** | **Description** |
| DEFCON 76 | Edn 12/06 | Contractor's Personnel at Government Establishments |
| DEFCON 90 | Edn 06/21 | Copyright |
| DEFCON 516 | Edn 04/12 | Equality |
| DEFCON 520 | Edn 05/18 | Corrupt Gifts and Payments of Commission |
| DEFCON 522 | Edn 11/17 | Payment and Recovery of Sums Due |
| DEFCON 539A | Edn 01/22 | Tenderers Sensitive Information |
| DEFCON 611 | Edn 12/16 | Issued Property |
| DEFCON 658 | Edn 09/21 | Cyber Further to DEFCON 658 the Cyber Risk Level of the Contract is LOW, as defined in Def Stan 05-138 |
| DEFCON 659A | Edn 09/21 | Security Measures |
| DEFCON 694 | Edn 07/18 | Accounting For Property of The Authority |
| DEFCON 703 | Edn 06/21 | Intellectual Property Rights –Vesting In the Authority |
| DEFCON 671 | Edn 10/22 | Plastic Packaging Tax |

DEFFORMs (Ministry of Defence Forms)

|  |  |  |
| --- | --- | --- |
| **DEFFORM No** | **Version** | **Description** |
| DEFFORM 711 | Edn 04/22 | Notification Of Intellectual Property Rights (IPR) Restrictions |
| DEFFORM 539A | Edn 01/22 | Tenderers Sensitive Information |

**Order Schedule 18 (Background Checks)**

**When you should use this Schedule**

This Schedule should be used where Supplier Staff must be vetted before working on the Contract.

**Definitions**

**“Relevant Conviction”** means any conviction listed in Annex 1 to this Schedule.

**Relevant Convictions**

The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

Notwithstanding Paragraph 3.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):

carry out a check with the records held by the Department for Education (DfE);

conduct thorough questioning regarding any Relevant Convictions; and

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 Deliverables any person who has a Relevant Conviction or an inappropriate record.

**Annex 1 – Relevant Convictions**

All workers must be security vetted and cleared as per Statement of Requirement.

**Order Schedule 20 (Order Specification)**

**STATEMENT OF REQUIREMENT FOR 705152450 (ND-0234) CLOUD HOSTED CYBER SECURITY VULNERABILITY SERVICE**

**Statement of Requirement**

1. It is recognised (subject of 1\* notes to CIO, Feb 21) that the RN’s understanding of its cyber terrain of its Cloud Hosted Services and Data/Information is currently very limited. This affects both the BAU and Operational ICT systems in the fixed and afloat environments. These Cloud Hosted services are increasingly embedded with OEM Technology and Software which could pose Cyber vulnerabilities without suitable analysis and remediation. Without this service the RN is unable to assess where it is at risk as a result of zero-day vulnerabilities identified by the MODCERT process or NCSC.

2. Navy Digital requires a Cloud-Hosted service to maintain and develop a comprehensive database of the systems, assets and software the RN depends upon to operate in cyberspace and an understanding of the technical vulnerabilities that exist on those systems and assets; as well as Management of Cyber Risk Assessment processes and procedures. The CHCSVS is responsible for the following outcomes:

a. **Asset Discovery & Visibility Management.** Create and maintain a comprehensive digital cloud-based inventory of the IT and OT systems and assets and their configuration state in use across all Maritime deployable platforms and establishments.

b. **Information Gathering.** Engage with DE&S, suppliers, ships and HQ staffs to create and maintain an up-to-date cloud-based library of system information.

c. **MODCERT Directive Response Management.** Co-ordinate the RN’s response to all MODCERT directives and advisories issued by Defence Digital and in line with HMG IS1/IS2 Risk analysis and management procedures.

d. **Vulnerability Analysis and Management.** Create and maintain a digital database of technical vulnerabilities known to affect RN Systems and infrastructure, whilst working alongside teams within RN Cyber to understand Cyber Threat Intelligence (CTI) and keep the databased updated.

e. **Vulnerability and Risk Prioritisation.** Conduct regular audits in line with international standards (ISO27001 & PCI-DSS) and Cyber Essentials (Plus). Produce weekly/monthly reports to inform the NC CDIO Information Management Board, NC Cyber Risk Team and the Defence Digital Asset Visibility Working Group on the current cyber risk to RN Maritime systems; and help them minimise that risk and tackle information security challenges

f. **Vulnerability Remediation.** Co-ordinate the tracking of remediation actions resulting from Cyber Assurance Assessments and Technical Vulnerability Assessments, including physical site assessments. Conduct reviews of clients and servers to produce Android/IOS/Blackberry and Internet-of-Things remediation plans.

3. **Duration.** 22 Months from 1 Dec 2022 until 30 Sep 2024.

4. **Location of Work.** The contract will be performed at Navy Command HQ (Portsdown), QinetiQ Portsdown Technology Park, Portsmouth.

5. **Security.**  Information will be processed up to SECRET.

 a. Data and services shall to be executed in accordance with accompanying Security Aspects Letter.

 b. Workers must be cleared to Developed Vetting (DV) level Security Clearance as a minimum at contract commencement.

 c. For commercial information security purposes, all embedded workers with MODnet accounts must clearly identify as a ‘Contractor’ within the rank/grade of their MOD.net tally and enterprise directory data.

6. **Team composition.** Redacted under FOIA Section 43, Commercial interests

 a. Specific qualifications, experience and knowledge of RN systems are required, including:

 i. Degree or industry recognised qualifications of Cyber Security.

 ii. ISO27001/ PCI- DSS. Cyber Essentials (Plus).

 iii. CREST Penetration Testing.

 iv. Working knowledge and experience with Power BI.

 v. Knowledge of RN security systems.

7. **Payment.**

 a. Payment will be monthly in arrears via EXOSTAR.

 b. Invoices shall detail grade, days worked, and day rate.

 c. The standard Navy Digital Travel and Subsistence policy is applicable.

8. **Government Furnished Assets (GFA).** Workers will be issued MODnet laptops.

9. **Acronyms.**

CIO Chief Information Officer

BAU Business As Usual

ICT Information and Computing Technology

OEM Original Equipment Manufacturer

MODCERT MOD Computer Emergency Response Team

NCSC National Cyber Security Centre

CHCSVS Cloud Hosted Cyber Security Vulnerability Service

IT and OT Systems Information Technology and Operational Technology Systems

DE&S Defence Equipment & Support

HQ Headquarters

CONDO Contractors on Deployed Operations

RMADS Risk Management and Accreditation Data Sets

SyOPs Security Operating Procedures

SOPs Standard Operating Procedures

NC CDIO Navy Digital Chief Digital Information Officer

PCI DSS Payment Card Industry Data Security Standard

10. **DPS Search Criteria undertaken 10 Oct 2022:**

NCSC Assured Services

Risk Management

Risk Assessment.

Audits in line with international standards (ISO27001)

Cyber Essentials (Plus)

Developed Vetting (DV) Security Clearance held

Domain: Defence

**Order Schedule 22 – Secret Matters**

**Associated definitions:**

In this Order Schedule 22, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **"Document"** | 1. includes specifications, plans, drawings, photographs and books;
 |
| **"Secret Matter"** | 1. means any matter connected with or arising out of the performance of this Order Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';
 |
| **"Servant"** | 1. where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.
 |

**1. Disclosure**

1.1 The Supplier shall not, either before or after the completion or termination of this Order Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:

 1.1.1 without the prior consent in writing of the Buyer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

 1.1.2 disclosed to or acquired by a person as respects whom the Buyer has given to the Supplier a notice in writing which has not been cancelled stating that the Buyer requires that Secret Matters shall not be disclosed to that person;

 1.1.3 without the prior consent in writing of the Buyer, disclosed to or acquired by any person who is not a Servant of the Supplier; or

 1.1.4 disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Order Contract that such person shall have the information.

**2.** **Safeguarding**

2.1 Without prejudice to the provisions of Paragraph 1, the Supplier shall, both before and after the completion or termination of this Order Contract, take all reasonable steps to ensure:

 2.1.1 no such person as is mentioned in Paragraph 1.1, 1.1.1 or 1.1.2, thereof shall have access to any item or Document under the control of the Supplier containing information about a Secret Matter except with the prior consent in writing of the Buyer;

 2.1.2 that no visitor to any premises in which there is any item to be supplied under this Order Contract or where Goods are being supplied shall see or discuss with the Supplier or any person employed by him any Secret Matter unless the visitor is authorised in writing by the Buyer so to do;

 2.1.3 that no photograph of any item to be supplied under this Order Contract or any portions of the Goods shall be taken except insofar as may be necessary for the proper performance of this Order Contract or with the prior consent in writing of the Buyer, and that no such photograph shall, without such consent, be published or otherwise circulated;

 2.1.4 that all information about any Secret Matter and every Document, model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Order Contract or with the prior consent in writing of the Buyer, no copies of or extracts from any such Document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such Document, model or item shall be placed thereon; and

 2.1.5 that if the Buyer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such Document, model or item as is mentioned in Paragraph 2.1.4, that Document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Buyer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

**3. Decision of the Buyer**

3.1 The decision of the Buyer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Order Schedule 22 shall be final and conclusive.

**4. Particulars of People**

4.1 If and when directed by the Buyer, the Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.

**5. Official Secrets Act**

5.1 If and when directed by the Buyer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of the Order Contract.

**6. Information concerning the Contract**

6.1 If, at any time either before or after the expiry or termination of this Order Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Order Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Buyer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.

**7. Duty to observe obligations**

7.1 The Supplier shall place every person employed by it, other than a Sub contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that Secret Matter as are imposed on the Supplier by Paragraphs 1 and 2 and shall, if directed by the Buyer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Order Schedule 22 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.

**8. Sub-Contract Obligations**

8.1 The Supplier shall, if directed by the Buyer, include in the Sub-Contract provisions in such terms as the Buyer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Order Schedule 22, but with such variations (if any) as the Buyer may consider necessary. Further the Supplier shall:

 8.1.1 give such notices, directions, requirements and decisions to its Sub Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Order Schedule 22 into operation in such cases and to such extent as the Buyer may direct;

 8.1.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Order Schedule 22, notify such breach forthwith to the Customer; and

 8.1.3 if and when so required by the Buyer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Paragraph 11.

**9. Information to the Buyer**

9.1 The Supplier shall give the Buyer such information and particulars as the Buyer may from time to time require for the purposes of satisfying the Buyer that the obligations imposed by or under the foregoing provisions of this Order Schedule 22 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Buyer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Order Contract or in which there is or will be any item to be supplied under this Order Contract, and also to inspect any Document or item in any such premises or which is being made or used for the purposes of this Order Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

**10. Exclusion**

10.1 Nothing in this Order Schedule 22 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

**11. Grounds for Termination**

11.1 If the Buyer shall consider that any of the following events has occurred:

 11.1.1 that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Order Schedule 22; or

 11.1.2 that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Buyer, or with any department or person acting on behalf of the Crown; or

 11.1.3 that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in Paragraph 11.1.4 information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Buyer, ought not to have such information;

 11.1.5 and shall also decide that the interests of the state require the termination of this Order Contract, the Buyer may by notice in writing terminate this Order Contract forthwith.

**12. Buyer Decision to Terminate**

12.1 A decision of the Buyer to terminate this Order Contract in accordance with the provisions of Paragraph 11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Buyer's decision is based.

**13. Supplier’s notice**

13.1 The Supplier may within five (5) Working Days of the termination of this Order Contract in accordance with the provisions of Paragraph 11, give the Buyer notice in writing requesting the Buyer to state whether the event upon which the Buyer's decision to terminate was based is an event mentioned in Paragraphs 11.1.1, 11.1.2 or 11.1.3 and to give particulars of that event; and

13.2 the Buyer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

**14. Matters pursuant to termination**

14.1 The termination of this Order Contract pursuant to Paragraph 11 shall be without prejudice to any rights of either Party which shall have accrued before the date of such termination;

14.2 The Supplier shall be entitled to be paid for any work or thing done under this Order Contract and accepted but not paid for by the Buyer at the date of such termination either at the price which would have been payable under this Order Contract if the Order Contract had not been terminated, or at a reasonable price;

14.3 The Buyer may take over any work or thing done or made under this Order Contract (whether completed or not) and not accepted at the date of such termination which the Buyer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Order Schedule 22 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Buyer, deliver any work or thing taken over under this Paragraph 14.3, and take all such other steps as may be reasonably necessary to enable the Buyer to have the full benefit of any work or thing taken over under this Paragraph 14.3 ; and

14.4 Save as aforesaid, the Supplier shall not be entitled to any payment from the Buyer after the termination of this Order Contract.

**15. Rights & Obligations after Termination**

15.1 If, after notice of termination of this Order Contract pursuant to the provisions of Paragraph 11:

 15.1.1 the Buyer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Paragraph 13.1; or

 15.1.2 the Buyer shall state in the statement and particulars detailed in Paragraph 13.2 that the event upon which the Buyer's decision to terminate this Order Contract was based is an event mentioned in Paragraph.11.1.3,

 15.1.3 the respective rights and obligations of the Supplier and the Buyer shall be terminated in accordance with the following provisions:

15.2 the Buyer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Order Contract under the provisions of Paragraph 11 and properly provided by or supplied to the Supplier for the performance of this Order Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Buyer, elect to retain;

15.3 the Supplier shall prepare and deliver to the Buyer within an agreed period or in default of agreement within such period as the Buyer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Buyer and shall deliver such materials and items in accordance with the directions of the Buyer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;

15.4 the Buyer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Order Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Order Contract;

15.5 if hardship to the Supplier should arise from the operation of this Paragraph 15 it shall be open to the Supplier to refer the circumstances to the Buyer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Buyer on any matter arising out of this Paragraph 15.5 shall be final and conclusive; and

15.6 subject to the operation of Paragraphs15.2, 15.3, 15.4, and 15.5 termination of this Order Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.