


# Award Form

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	<b>Buyer</b>	for the Department of Education (the Buyer). Its offices are on:  Sanctuary Buildings Great Smith Street London SW1P 3BT
2.	<b>Supplier</b>	<p>Name: The Natural History Museum Trading Company Limited</p> <p>Address: Cromwell Road, London, SW7 5BD 02909192</p> <p>Registration number:</p> <p>SID4GOV ID: Will apply to Cabinet Office post contract signing</p>
3.	<b>Contract</b>	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables.</p> <p>This opportunity is advertised in the Contract Notice in Find A Tender, reference 2022-041546 (FTS Contract Notice).</p>
4.	<b>Contract reference</b>	<p>The Department for Education National Education Nature Park and Climate Leaders Award</p>
5.	<b>Deliverables</b>	See Schedule 2 (Specification) for further details.
6.	<b>Buyer Cause</b>	
7.	<b>Collaborative working principles</b>	<p>The Collaborative Working Principles apply to this Contract.</p> <p>See Clause 3.1.3 for further details.</p>
8.	<b>Financial Transparency Objectives</b>	<p>The Financial Transparency Objectives apply to this Contract.</p> <p>See Clause 6.3 for further details.</p> <p><a href="https://www.gov.uk/government/publications/procurement-policynote-0516-open-book-contact-management">https://www.gov.uk/government/publications/procurement-policynote-0516-open-book-contact-management</a></p>

<b>9.</b>	<b>Start Date</b>	04/10/2022
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<b>10.</b>	<b>Expiry Date</b>	31/08/2024
<b>11.</b>	<b>Extension Period</b>	<p>Further three-year period in one year increments up to One + One + One year's</p> <p>Extension exercised where the Buyer gives the Supplier no less than 3 Months' written notice before the expiry of the initial term and thereafter before each extension period ends.</p>
<b>12.</b>	<b>Ending the Contract without a reason</b>	The Buyer shall be able to terminate the Contract in accordance with Clause 14.3


13.	<b>Incorporated Terms</b> (together these documents form the "the Contract")	<p>The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> <li>a) This Award Form</li> <li>b) Core Terms</li> <li>c) Schedule 36 (Intellectual Property Rights)</li> <li>d) Schedule 1 (Definitions)</li> <li>e) Schedule 6 (Transparency Reports)</li> <li>f) Schedule 20 (Processing Data)</li> <li>g) The following Schedules (in equal order of precedence):             <ul style="list-style-type: none"> <li>a. Schedule 2 (Specification)</li> <li>b. Schedule 3 (Charges)</li> <li>c. Schedule 4 (Tender)</li> <li>d. Schedule 5 (Commercially Sensitive Information)</li> <li>e. <a href="#">Schedule 10 (Service Levels)</a></li> <li>f. <a href="#">Schedule 13 (Contract Management)</a></li> <li>g. <a href="#">Schedule 16 (Security)</a></li> <li>h. <a href="#">Schedule 19 (Cyber Essentials Scheme)</a></li> <li>i. Schedule 22 (Insurance Requirements)</li> <li>j. Schedule 26 (Sustainability)</li> <li>k. <a href="#">Schedule 27 (Key Subcontractors)</a></li> <li>l. <a href="#">Schedule 29 (Key Supplier Staff)</a></li> <li>m. <a href="#">Schedule 30 (Exit Management)</a></li> </ul> </li> </ul>
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		<a href="#">Schedule 32 (Background Checks)</a>	
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		<p>n. <a href="#">Appendix 1 (Safeguarding Children and Vulnerable Adults)</a></p> <p>o. <a href="#">Appendix 2 (The Natural History Museum Tender Response)</a></p> <p>p. <a href="#">Appendix 3 (Environmental Policy)</a></p> <p>q. <a href="#">Appendix 3 (Environmental Policy)</a></p> <p>h)</p> <p>ule 4 (Tender), unless any part of the Ten (as r commercial position for the Buyer decid in its absolute discretion), in which take of the Tender will precedence over the d</p>
14.	<b>Special Terms</b>	None
15.	<b>Sustainability</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).
16.	<b>Buyer's Environmental Policy</b>	See Appendix 3
17.	<b>Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports as set out in Schedule 26 (Sustainability)
18.	<b>Buyer's Security Policy</b>	See Schedule 16 (Security)
19.	<b>Commercially Sensitive Information</b>	Supplier's Commercially Sensitive Information: Schedule 5 (Commercially Sensitive Information)
20.	<b>Charges</b>	
21.	<b>Reimbursable expenses</b>	None
22.	<b>Payment method</b>	BACS

23.	<b>Service Levels</b>	<p>Service Credits will accrue in accordance with Schedule 10 (Service Levels). To be discussed and agreed collaboratively within 60 days of contract signature.</p> <p>The Service Credit Cap is: <i>[Insert £value]</i></p> <p>The Service Period is <i>[Insert duration: [ ] Month(s)]</i></p> <p>A Critical Service Level Failure is: <i>[Buyer to define]</i></p>
24.	<b>Insurance</b>	Details in Annex of Schedule 22 (Insurance Requirements).
25.	<b>Liability</b>	<p>In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of [REDACTED] or 150% of the Estimated Yearly Charges.</p> <p>In accordance with Clause 15.5, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being [REDACTED]</p>
26.	<b>Cyber Essentials Certification</b>	<ul style="list-style-type: none"> <li>• Cyber Essentials Scheme Basic Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)</li> </ul>
27.	<b>Progress Meetings and Progress Reports</b>	<ul style="list-style-type: none"> <li>• The Supplier shall attend Progress Meetings with the Buyer every month.</li> <li>• The Supplier shall provide the Buyer with Progress Reports every month</li> </ul>
28.	<b>Guarantee</b>	Not applicable
29.	<b>Virtual Library</b>	Not applicable]
30.	<b>Supplier Contract Manager</b>	[REDACTED]
31.	<b>Supplier Authorised Representative</b>	[REDACTED]

32.	<b>Supplier Compliance Officer</b>	
33.	<b>Supplier Data Protection Officer</b>	
34.	<b>Supplier Marketing Contact</b>	
35	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 1</b></p> <p>Name: Royal Horticultural Society (RHS)</p> <p>Registration number (if registered): RC000480</p> <p>Role of Subcontractor: To create delivery model for Nature Park including support for schools</p>
36	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 2</b></p> <p>Name: Royal Society (RS):</p> <p>Registration number (if registered): RC000519</p> <p>Role of Subcontractor: Establish a national awards scheme ensuring all young people can be recognised according to individual interests and abilities</p>
37	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 3</b></p> <p>Name: Royal Geographical Society (RGS)</p> <p>Registration number (if registered): RC000477</p> <p>Role of Subcontractor: To engage networks and Geography teachers and provide learning resources and guidance around green careers pathways</p>
38	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 4</b></p> <p>Name: Manchester Metropolitan University (MMU)</p> <p>Registration number (if registered):N/A</p> <p>Role of Subcontractor: <a href="#">Manchester Metropolitan University will act as a Champion</a> for the National Education Nature Park and the Climate</p>

		Leaders Award initiatives, by sharing the University's facilities and expertise with local schools and colleges.
39	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 5</b></p> <p>Name: Learning Through Landscapes (LtL)</p> <p>Registration number (if registered): 02573923</p> <p>Role of Subcontractor: Pilot specialist Early Years support for Nature Park delivery</p>
40	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 6</b></p> <p>Name: UK Centre for Ecology and Hydrology (UKCEH)</p> <p>Registration number (if registered): 11314957</p> <p>Role of Subcontractor: Support the development, adaptation and codesign of citizen science resources and tools, inform monitoring protocols, support the development of habitat enhancement guidance</p>
41	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 7</b></p> <p>Name: National Biodiversity Network Trust (NBNT)</p> <p>Registration number (if registered): 03963387</p> <p>Role of Subcontractor: The NBNT will share their expertise and digital infrastructure, maximising the onward value of the biodiversity data generated within the Nature Park, with particular emphasis on data standards, data attribution and licensing and data flow pathways.</p>
	<b>Buyer Authorised Representative</b>	

<b>For and on behalf of the Supplier:</b>	<b>For and on behalf of the Buyer:</b>
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Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

**Core Terms – Mid-tier**

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## **1. Definitions used in the contract**

1.1. Interpret this Contract using Schedule 1 (Definitions).

## **2. How the contract works**

2.1. If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:

- 2.1.1. make changes to the Award Form;
- 2.1.2. create new Schedules;
- 2.1.3. exclude optional template Schedules; and
- 2.1.4. use Special Terms in the Award Form to add or change terms.

2.2. The Contract:

- 2.2.1. is between the Supplier and the Buyer; and
- 2.2.2. includes Core Terms, Schedules and any other changes or items in the completed Award Form.

2.3. The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.4. The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:

- 2.4.1. the Buyer's requirements for the Deliverables;
- 2.4.2. the Buyer's operating processes and working methods; and
- 2.4.3. the ownership and fitness for purpose of the Buyer Assets,

and it has it has advised the Buyer in writing of:

- 2.4.4. each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
- 2.4.5. the actions needed to remedy each such unsuitable aspect; and
- 2.4.6. a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and such actions, timetable and costs are fully reflected in this

Contract.

2.5. The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- 2.5.1. verify the accuracy of the Due Diligence Information; and
- 2.5.2. properly perform its own adequate checks.

- 2.6. The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7. The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate

### **3. What needs to be delivered**

#### **3.1. All deliverables**

3.1.1. The Supplier must provide Deliverables:

- a) that comply with the Specification, the Tender Response and the Contract;
- b) using reasonable skill and care;
- c) using Good Industry Practice;
- d) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
- e) on the dates agreed; and
- f) that comply with Law.

3.1.2. The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.

3.1.3. Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:

- a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and

- e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

### **3.2. Goods clauses**

- 3.2.1. All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2. All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- 3.2.3. The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.4. Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 3.2.5. The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.6. The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.7. The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8. All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9. The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10. The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.11. The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.12. The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the

Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

### **3.3. Services clauses**

- 3.3.1. Late Delivery of the Services will be a Default of the Contract.
- 3.3.2. The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.3. The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
- 3.3.4. The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 3.3.5. The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6. The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.7. The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **4. Pricing and payments**

- 4.1. In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2. All Charges:
  - 4.2.1. exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 4.2.2. include all costs connected with the Supply of Deliverables.
- 4.3. The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.
- 4.4. A Supplier invoice is only valid if it:
  - 4.4.1. includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer; and

- 4.4.2. includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5. The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6. The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.7. The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

## 5. The buyer's obligations to the supplier

- 5.1. If Supplier Non-Performance arises from a Buyer Cause:
  - 5.1.1. the Buyer cannot terminate the Contract under Clause 14.4.1;
  - 5.1.2. the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
  - 5.1.3. the Supplier is entitled to additional time needed to make the Delivery;
  - 5.1.4. the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2. Clause 5.1 **Error! Reference source not found.** only applies if the Supplier:
  - 5.2.1. gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware;
  - 5.2.2. demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
  - 5.2.3. mitigated the impact of the Buyer Cause.

## 6. Record keeping and reporting

- 6.1. The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2. The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for 7 years after the End Date and in accordance with the UK GDPR or the EU GDPR as the

context requires, including the records and accounts which the Buyer has a right to Audit.

6.3. Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:

- 6.3.1. on or before the Start Date;
- 6.3.2. at the end of each Contract Year; and
- 6.3.3. within 6 Months of the end of the Contract Period,

and the Supplier must meet with the Buyer if requested within 10 Working Days of the Buyer receiving a Financial Report.

6.4. If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:

- 6.4.1. Supplier's currently incurred or forecast future Costs; and
- 6.4.2. forecast Charges for the remainder of the Contract, then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.

6.5. The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:

- 6.5.1. complies with the Supplier's operating procedures; and
- 6.5.2. does not unreasonably disrupt the Supplier or its provision of the Deliverables.

6.6. During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:

- 6.6.1. all information within the permitted scope of the Audit;
- 6.6.2. any Sites, equipment and the Supplier's ICT system used in the performance of the Contract; and
- 6.6.3. the Supplier Staff.

6.7. The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.

6.8. The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:

- 6.8.1. correcting any identified Default;
  - 6.8.2. rectifying any error identified in a Financial Report; and
  - 6.8.3. repaying any Charges that the Buyer has overpaid.
- 6.9. If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - 6.9.1. tell the Buyer and give reasons;
  - 6.9.2. propose corrective action; and
  - 6.9.3. provide a deadline for completing the corrective action.
- 6.10. Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

## **7. Supplier staff**

- 7.1. The Supplier Staff involved in the performance of the Contract must:
  - 7.1.1. be appropriately trained and qualified;
  - 7.1.2. be vetted using Good Industry Practice and the Security Policy; and
  - 7.1.3. comply with all conduct requirements when on the Buyer's Premises.
- 7.2. Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3. If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clauses 31.1 to 31.4.
- 7.4. The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.5. The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## **8. Supply chain**

### **8.1. Appointing Subcontractors**

8.1.1. The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:

- a) manage Subcontractors in accordance with Good Industry Practice;
- b) comply with its obligations under this Contract; and
- c) assign, novate or transfer its rights and/or obligations under the SubContract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

### **8.2. Mandatory provisions in Sub-Contracts**

8.2.1. The Supplier will ensure that all Sub-Contracts in the Supplier's supply chain entered into after the Effective Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or nonpayment if this 30-day limit is exceeded.

8.2.2. The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier's supply chain entered into before the Effective Date but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or nonpayment if this 30-day limit is exceeded.

### 8.3. **When Sub-Contracts can be ended**

8.3.1. At the Buyer's request, the Supplier must terminate any SubContracts in any of the following events:

- a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
- c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

### 8.4. **Competitive terms**

8.4.1. If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

8.4.2. If the Buyer uses Clause 8.4.1 **Error! Reference source not found.** then the Charges must be reduced by an agreed amount by using the Variation Procedure.

### 8.5. **Ongoing responsibility of the Supplier**

8.5.1. The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

## 9. **Rights and protection**

9.1. The Supplier warrants and represents that:

- 9.1.1. it has full capacity and authority to enter into and to perform the Contract;
- 9.1.2. the Contract is executed by its authorised representative;

- 9.1.3. it is a legally valid and existing organisation incorporated in the place it was formed;
  - 9.1.4. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract;
  - 9.1.5. all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and for the Buyer to receive the Deliverables;
  - 9.1.6. it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
  - 9.1.7. it is not impacted by an Insolvency Event or a Financial Distress Event; and
  - 9.1.8. neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Start Date or been subject to an investigation relating to a Prohibited Act.
- 9.2. The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3. The Supplier indemnifies the Buyer against each of the following:
- 9.3.1. wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
  - 9.3.2. non-payment by the Supplier of any tax or National Insurance.
- 9.4. All claims indemnified under this Contract must use Clause 30.
- 9.5. The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
- 9.6. If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.7. All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **10. Intellectual Property Rights (IPRs)**

- 10.1. The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.

- 10.2. If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.3. If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- 10.3.1. obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
  - 10.3.2. replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.4. If the Buyer requires that the Supplier procures a licence in accordance with Schedule 36 or to modify or replace an item pursuant to Schedule 36, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect.

## **11. Rectifying issues**

- 11.1. If there is a Notifiable Default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2. When the Buyer receives a requested Rectification Plan it can either:
- 11.2.1. reject the Rectification Plan or revised Rectification Plan giving reasons; or
  - 11.2.2. accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3. Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
- 11.3.1. will give reasonable grounds for its decision; and
  - 11.3.2. may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

## **12. Escalating issues**

- 12.1. If the Supplier fails to:

- 12.1.1. submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and
  - 12.1.2. adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.
- or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.
- 12.2. The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
  - 12.3. If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clause 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

## **13. Step-in rights**

- 13.1. If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:
  - 13.1.1. whether it will be taking action itself or with the assistance of a third party;
  - 13.1.2. what Required Action the Buyer will take during the Step-In Process;
  - 13.1.3. when the Required Action will begin and how long it will continue for;
  - 13.1.4. whether the Buyer will require access to the Sites; and
  - 13.1.5. what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 13.2. For as long as the Required Action is taking place:
  - 13.2.1. the Supplier will not have to provide the Deliverables that are the subject of the Required Action;

- 13.2.2. no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
  - 13.2.3. the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3. The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within 20 Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4. If the Buyer does not approve the draft StepOut Plan, the Buyer will give reasons and the Supplier will revise the draft StepOut Plan and resubmit it for approval.
- 13.5. The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
  - 13.5.1. limbs (f) or (g) of the definition of a Step-In Trigger Event; or
  - 13.5.2. limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

## **14. Ending the contract**

- 14.1. The Contract takes effect on the Start Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.
- 14.2. The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.
- 14.3. Ending the contract without a reason
  - 14.3.1. The Buyer has the right to terminate the Contract at any time without reason or (unless the Award Form states something different) liability by giving the Supplier not less than 90 days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clauses 1.1.1.b) to 1.1.1.h) applies.

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

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

- a) there's a Supplier Insolvency Event;
- b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non Compliance
- c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request;
- e) there's any material Default of the Contract;
- f) a Default that occurs and then continues to occur on one or more occasions within 6 Months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;
- g) there's any material Default of any Joint Controller Agreement relating to the Contract;
- h) there's a Default of Clauses 2.7, 10, 12, 18, 19, 31, 36, Schedule 19 (Cyber Essentials) (where applicable) or Schedule 36 (Intellectual Property Rights) relating to the Contract;
- i) the performance of the Supplier causes a Critical Service Level Failure to occur;
- j) there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- k) there's a Change of Control of the Supplier which isn't preapproved by the Buyer in writing;
- l) the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
- m) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
- n) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.

14.4.2. The Buyer also has the right to terminate the Contract in accordance with Clauses 9.5 and 24.3, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) and Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable).

14.4.3. If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clauses 1.1.1.b) to 1.1.1.h) applies.

**14.5. What happens if the contract ends**

14.5.1. Where the Buyer terminates the Contract under Clauses 14.4.1 and 9.5, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) or Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable). All of the following apply:

- a) The Supplier is responsible for the Buyer's excess reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- b) The Buyer's payment obligations under the terminated Contract stop immediately.
- c) Accumulated rights of the Parties are not affected.
- d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- e) The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.
- f) The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- g) The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.
- h) The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 10, 15, 18, 19, 20, 21, 22, 39, 40, Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

14.5.2. If either Party terminates the Contract under Clause 24.3:

- a) each party must cover its own Losses; and
- b) Clauses b) to 1.1.1.h) applies.

**14.6. When the Supplier can end the contract**

14.6.1. The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within 30 days of the date of the Reminder Notice.

14.6.2. The Supplier also has the right to terminate the Contract in accordance with Clauses 24.3 and 27.5.

14.6.3. Where the Buyer terminates the Contract under Clause 14.3 or the Supplier terminates the Contract under Clause 14.6.1 or 27.5:

- a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
- c) Clauses 1.1.1.d) to 1.1.1.h) apply.

#### **14.7. Partially ending and suspending the contract**

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

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

14.7.3. The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

- a) reject the Variation; or
- b) increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4. The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

## **15. How much you can be held responsible for**

15.1. Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.

15.2. Neither Party is liable to the other for:

- 15.2.1. any indirect Losses; and

- 15.2.2. Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 15.3. In spite of Clause 15.1, neither Party limits or excludes any of the following:
  - 15.3.1. its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 15.3.2. its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
  - 15.3.3. any liability that cannot be excluded or limited by Law.
- 15.4. In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 9.3, **Error! Reference source not found.**, 16.3 or Schedule 7 (Staff Transfer) of the Contract.
- 15.5. In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.6. Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 15.7. When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
  - 15.7.1. Deductions; and
  - 15.7.2. any items specified in Clause 15.4.
- 15.8. If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## 16. Obeying the law

- 16.1. The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2. The Supplier shall comply with the provisions of:
  - 16.2.1. the Official Secrets Acts 1911 to 1989; and
  - 16.2.2. section 182 of the Finance Act 1989.
- 16.3. The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.

- 16.4. The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

## **17. Insurance**

- 17.1. The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

## **18. Data protection**

- 18.1. The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 18.2. The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3. The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 18.4. The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 18.5. If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6. If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- 18.6.1. tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
  - 18.6.2. restore the Government Data itself or using a third party.
- 18.7. The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is entirely at fault.
- 18.8. The Supplier:
- 18.8.1. must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;

- 18.8.2. must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- 18.8.3. must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- 18.8.4. securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and
- 18.8.5. indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

## **19. What you must keep confidential**

- 19.1. Each Party must:
  - 19.1.1. keep all Confidential Information it receives confidential and secure;
  - 19.1.2. not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
  - 19.1.3. immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 19.2. In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
  - 19.2.1. where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - 19.2.2. if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
  - 19.2.3. if the information was given to it by a third party without obligation of confidentiality;
  - 19.2.4. if the information was in the public domain at the time of the disclosure;

- 19.2.5. if the information was independently developed without access to the Disclosing Party's Confidential Information;
  - 19.2.6. on a confidential basis, to its auditors or for the purpose of regulatory requirements;
  - 19.2.7. on a confidential basis, to its professional advisers on a need-to-know basis; and
  - 19.2.8. to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3. The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 19.4. The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1. on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 19.4.2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 19.4.3. if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions; 19.4.4. where requested by Parliament; and
  - 19.4.5. under Clauses 4.6 and 20.
- 19.5. For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6. Transparency Information and any Information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7. The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

## 20. When you can share information

- 20.1. The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 20.2. In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
  - 20.2.1. publish the Transparency Information;
  - 20.2.2. comply with any Freedom of Information Act (FOIA) request; and
  - 20.2.3. comply with any Environmental Information Regulations (EIR) request.
- 20.3. To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## 21. Invalid parts of the contract

- 21.1. If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from the Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.
- 21.2. If any removal under Clause 21.1 is so fundamental that it prevents the purpose of the Contract from being achieved or it materially changes the balance of risk and rewards between the Parties, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to rectify these issues and to amend the Contract accordingly so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that it is reasonably possible, achieves the Parties' original commercial intention.
- 21.3. If the Parties cannot agree on what amendments are required within 5 Working Days, the matter will be dealt with via commercial negotiation as set out in Clause **Error! Reference source not found.** and, if there is no resolution within 30 Working Days of the matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.

## **22. No other terms apply**

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

## **23. Other people's rights in the Contract**

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

## **24. Circumstances beyond your control**

- 24.1. Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
  - 24.1.1. provides a Force Majeure Notice to the other Party; and
  - 24.1.2. uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2. Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 24.3. Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

## **25. Relationships created by the contract**

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

## **26. Giving up contract rights**

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

## 27. Transferring responsibilities

27.1. The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.

27.2. Subject to Schedule 27 (Key Subcontractors), the Supplier cannot subcontract the Contract or any part of it without the Buyer's prior written consent.

The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

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

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

27.2.3. the proposed Subcontractor employs unfit persons

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

27.4. When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

27.5. The Supplier can terminate the Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.

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

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

27.7.1. their name;

27.7.2. the scope of their appointment; 27.7.3.

the duration of their appointment; and

27.7.4. a copy of the Sub-Contract.

## 28. Changing the contract

- 28.1. Either Party can request a Variation to the Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.
- 28.2. The Supplier must provide an Impact Assessment either:
  - 28.2.1. with the Variation Form, where the Supplier requests the Variation; and
  - 28.2.2. within the time limits included in a Variation Form requested by the Buyer.
- 28.3. If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:
  - 28.3.1. agree that the Contract continues without the Variation; and
  - 28.3.2. refer the Dispute to be resolved using Clause 39 (Resolving Disputes).
- 28.4. The Buyer is not required to accept a Variation request made by the Supplier.
- 28.5. The Supplier may only reject a Variation requested by the Buyer if the Supplier:
  - 28.5.1. reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
  - 28.5.2. demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
- 28.6. If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 28.7. If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:
  - 28.7.1. that the Supplier has kept costs as low as possible, including in Subcontractor costs; and

28.7.2. of how it has affected the Supplier's costs.

28.8. Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

## **29. How to communicate about the contract**

29.1. All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9am on the first Working Day after sending unless an error message is received.

29.2. Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.

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

## **30. Dealing with claims**

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

30.2. At the Indemnifier's cost the Beneficiary must both:

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

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

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

30.4. The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

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

30.6. Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.

- 30.7. If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
- 30.7.1. the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
  - 30.7.2. the amount the Indemnifier paid the Beneficiary for the Claim.

## **31. Preventing fraud, bribery and corruption**

- 31.1. The Supplier must during the Contract Period:
- 31.1.1. commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
  - 31.1.2. do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 31.2. The Supplier must during the Contract Period:
- 31.2.1. create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
  - 31.2.2. keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
  - 31.2.3. if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 31.3. The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:
- 31.3.1. been investigated or prosecuted for an alleged Prohibited Act;
  - 31.3.2. been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 31.3.3. received a request or demand for any undue financial or other advantage of any kind related to the Contract; and

- 31.3.4. suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act.
- 31.4. If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 31.5. If the Supplier is in Default under Clause 31.1 the Buyer may:
  - 31.5.1. require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
  - 31.5.2. immediately terminate this agreement.
- 31.6. In any notice the Supplier gives under Clause 31.4 it must specify the:
  - 31.6.1. Prohibited Act;
  - 31.6.2. identity of the Party who it thinks has committed the Prohibited Act; and
  - 31.6.3. action it has decided to take.

## **32. Equality, diversity and human rights**

- 32.1. The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
  - 32.1.1. protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - 32.1.2. any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 32.2. The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

## **33. Health and safety**

- 33.1. The Supplier must perform its obligations meeting the requirements of:
  - 33.1.1. all applicable Law regarding health and safety; and

- 33.1.2. the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 33.2. The Supplier must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.

## **34. Environment**

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

## **35. Tax**

- 35.1. The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 35.2. Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:
  - 35.2.1. the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
  - 35.2.2. other information relating to the Occasion of Tax NonCompliance that the Buyer may reasonably need.
- 35.3. Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
  - 35.3.1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - 35.3.2. indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction,

contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

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

35.4.1. the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

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

35.4.3. the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and

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

## **36. Conflict of interest**

36.1. The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.

36.2. The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

36.3. The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

## **37. Reporting a breach of the contract**

37.1. As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:

37.1.1. Law;

37.1.2. Clause 16.1; and

37.1.3. Clauses 31 to 36.

37.2. The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 37.1 to the Buyer or a Prescribed Person.

## **38. Further Assurances**

38.1. Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

## **39. Resolving disputes**

39.1. If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.

39.2. If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.3 to 39.5.

39.3. Unless the Buyer refers the Dispute to arbitration using Clause 39.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

39.3.1. determine the Dispute;

39.3.2. grant interim remedies; and

39.3.3. grant any other provisional or protective relief.

39.4. The Supplier agrees that the Buyer has the exclusive right to refer any

Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

39.5. The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.4.

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

## **40. Which law applies**

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

## **Schedule 36 (Intellectual Property Rights)**

## **Intellectual Property Rights**

Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.

Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

### **Licences granted by the Supplier: Supplier Existing IPR**

Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph **Error! Reference source not found.**

The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a nonexclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:

or any End User to use and receive the Deliverables; or

to use, sub-licence or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### **Licences granted by the Buyer and New IPR**

Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations during the Contract Period.

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

Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.

## Open Licence Publication

Subject to Paragraph **Error! Reference source not found.**, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.

Subject to Paragraph **Error! Reference source not found.**, the Supplier hereby warrants that the New IPR Items are suitable for release under Open Licence.

The Supplier will supply any or all New IPR Items in a format suitable for publication under Open Licence ("the Open Licence Publication Material") within 30 days of written request from the Buyer ("Buyer Open Licence Request").

The Supplier may within 15 days of a Buyer Open Licence Request under Paragraph **Error! Reference source not found.** request in writing that the Buyer excludes all or part of:

the New IPR; or

Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph **Error! Reference source not found.**

from Open Licence publication.

Any decision to Approve any such request from the Supplier pursuant to Paragraph **Error! Reference source not found.** shall be at the Buyer's sole discretion, not to be unreasonably withheld, delayed or conditioned.

Subject to Clause 15 of the Core Terms, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.

## Third Party IPR

The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph **Error! Reference source not found.** If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph **Error! Reference source not found.** in respect of any Third Party IPR the Supplier shall:

notify the Buyer in writing; and

use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.

In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.

### **Termination of licences**

The Supplier Existing IPR Licence granted pursuant to Paragraph **Error! Reference source not found.** and the Third Party IPR Licence granted pursuant to Paragraph **Error! Reference source not found.** shall survive the Expiry Date and termination of this Contract.

The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

Any licence granted to the Supplier pursuant to Paragraph **Error! Reference source not found.** (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall:

immediately cease all use of the Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);

at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that

contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.

## **Schedule 1 (Definitions)**

### **DEFINITIONS**

In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

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.

In the Contract, unless the context otherwise requires:

the singular includes the plural and vice versa;

reference to a gender includes the other gender and the neuter; references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body; a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

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**";

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;

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; 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; references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified. the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.

Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the

European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):

- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

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

<b>"Achieve"</b>	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Additional FDE Group Member"</b>	means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties);
<b>"Affected Party"</b>	the party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	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;
<b>"Allowable Assumptions"</b>	means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges);
<b>"Annex"</b>	extra information which supports a Schedule;

<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Associates"</b>	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
<b>"Audit"</b>	<p>the Buyer's right to:</p> <ul style="list-style-type: none"> <li>(a) verify the integrity and content of any Financial Report;</li> <li>(b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>(c) 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;</li> <li>(d) verify the Open Book Data;</li> <li>(e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>(f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>(g) 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;</li> </ul>
	<ul style="list-style-type: none"> <li>(h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>(i) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</li> </ul>

	<ul style="list-style-type: none"> <li>(j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;</li> <li>(k) 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 Buyer has used its resources;</li> </ul>
<b>"Auditor"</b>	<ul style="list-style-type: none"> <li>(a) the Buyer's internal and external auditors;</li> <li>(b) the Buyer's statutory or regulatory auditors;</li> <li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>(d) HM Treasury or the Cabinet Office;</li> <li>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</li> <li>(f) successors or assigns of any of the above;</li> </ul>
<b>"Award Form"</b>	the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;

<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	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;

<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>	has the meaning given to it in the Award Form;
<b>"Buyer Data"</b>	<p>means 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 Buyer's or End User's Confidential Information, and which:</p> <p>are supplied to the Supplier by or on behalf of the Buyer, or End User; or the Supplier is required to generate, process, store or transmit pursuant to this Contract; or any Personal Data for which the Buyer or End User is the Controller;</p>
<b>"Buyer Existing IPR"</b>	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Central Government Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Buyer Premises"</b>	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);
<b>"Buyer Third Party"</b>	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;

<b>"Buyer's Confidential Information"</b>	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 Buyer (including all Buyer Existing IPR and New IPR); 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 Buyer's attention or into the Buyer's possession in connection with the Contract; and information derived from any of the above;
<b>"Central Government Body"</b>	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:  Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency;
<b>"Change in Law"</b>	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;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;

<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the Award 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 Buyer that, if disclosed by the Buyer, would cause the
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	Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of 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 <b>"confidential"</b> ) or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
<b>"Contract"</b>	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
<b>"Contract Period"</b>	the term of the Contract from the earlier of the: Start Date; or the Effective Date until the End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;

<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Core Terms"</b>	the Buyer's terms and conditions which apply to and comprise one part of the Contract set out in the document called "Core Terms";

<p><b>"Costs"</b></p>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <p>the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</p> <p>base salary paid to the Supplier Staff;</p> <p>employer's National Insurance contributions;</p> <p>pension contributions; car allowances;</p> <p>any other contractual employment benefits; staff training;</p> <p>work place accommodation;</p> <p style="padding-left: 40px;">work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below);</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">reasonable recruitment costs, as agreed with the Buyer;</p> <p>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; 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; and</p> <p>Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables; but</p> <p>excluding: Overhead;</p> <p>financing or similar costs;</p>
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	<p>maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise; taxation; fines and penalties;</p> <p>amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Award Form;
<b>"Crown Body"</b>	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 particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown IPR"</b>	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	(i) the UK GDPR, (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; and (iv) (to the extent that it applies) the EU GDPR;
<b>"Data Protection Liability Cap"</b>	has the meaning given to it in the Award Form;

<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject Access Request"</b>	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;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of the 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 the Contract and in respect of which the Supplier is liable to the Buyer;
<b>"Delay Payments"</b>	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;
<b>"Deliverables"</b>	Goods and/or Services that may be ordered under the Contract including the Documentation;
<b>"Delivery"</b>	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;

<b>“Dependent Parent Undertaking”</b>	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the
	provision of the Services in accordance with the terms of this Contract;
<b>"Disaster"</b>	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 Award Form (for the purposes of this definition the <b>"Disaster Period"</b> );
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or noncontractual) arising 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;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 39 (Resolving disputes);

<b>"Documentation"</b>	<p>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 the Contract as:</p> <p>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 is required by the Supplier in order to provide the Deliverables; and/or</p> <p>has been or shall be generated for the purpose of providing the Deliverables;</p>
<b>"DOTAS"</b>	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;
<b>"DPA 2018"</b>	The Data Protection Act 2018
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>"End Date"</b>	<p>the earlier of:</p> <p>the Expiry Date as extended by the Buyer under Clause 14.2; or if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</p>

<b>"End User"</b>	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
<b>"Environmental Policy"</b>	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;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Escalation Meeting"</b>	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;

<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	<p>means for the purposes of calculating each Party's annual liability under Clause 15.1:</p> <p>in the first Contract Year, the Estimated Year 1 Charges; or in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or</p> <p>after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;</p>
<b>"EU"</b>	European Union
<b>"EU GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;

<b>"Existing IPR"</b>	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);
<b>"Exit Plan"</b>	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
<b>"Expiry Date"</b>	the date of the end of the Contract as stated in the Award Form;
<b>"Extension Period"</b>	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
<b>"FDE Group"</b>	the Supplier and any Additional FDE Group Member;
<b>"Financial Distress Event"</b>	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> <li>(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;</li> </ul>
	<ul style="list-style-type: none"> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> <li>(e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;</li> <li>(f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;</li> </ul>

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|  | <ul style="list-style-type: none"> <li>(g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;</li> <li>(h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;</li> <li>(i) any of the following: <ul style="list-style-type: none"> <li>(i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;</li> <li>(ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;</li> <li>(iii) non-payment by any FDE Group entity of any financial indebtedness;</li> <li>(iv) any financial indebtedness of any FDE Group</li> </ul> </li> </ul> |
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	<p>entity becoming due as a result of an event of default;</p> <p>(v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or</p> <p>(vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity, in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with the Contract; or</p> <p>(j) any of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold.</p>
<b>"Financial Report"</b>	<p>a report provided by the Supplier to the Buyer that:</p> <ol style="list-style-type: none"> <li>1. to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</li> <li>2. to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</li> <li>3. is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of this Contract; and</li> <li>4. is certified by the Supplier's Chief Financial Officer or Director of Finance;</li> </ol>
<b>"Financial Transparency Objectives"</b>	<p>means:</p> <ol style="list-style-type: none"> <li>5. the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;</li> <li>6. the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers</li> </ol>

	<p>and appropriate forecasting techniques;</p> <ol style="list-style-type: none"> <li>7. the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;</li> <li>8. the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;</li> <li>9. the Parties challenging each other with ideas for efficiency and improvements; and</li> <li>10. enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;</li> </ol>
<b>"FOIA"</b>	<p>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;</p>
<b>"Force Majeure Event"</b>	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ol style="list-style-type: none"> <li>(a) 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;</li> <li>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>(c) acts of a Crown Body, local government or regulatory bodies;</li> <li>(d) fire, flood or any disaster; or</li> <li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> <li>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;</li> <li>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</li> </ul> </li> </ol>

	<p>any failure of delay caused by a lack of funds,</p> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<b>"Force Majeure Notice"</b>	<p>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;</p>
<b>"General Anti-Abuse Rule"</b>	<p>the legislation in Part 5 of the Finance Act 2013 and; and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</p>
<b>"General Change in Law"</b>	<p>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;</p>
<b>"Goods"</b>	<p>goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;</p>
<b>"Good Industry Practice"</b>	<p>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;</p>
<b>"Government"</b>	<p>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;</p>

<b>"Government Data"</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which: are supplied to the Supplier by or on behalf of the Buyer; or the Supplier is required to generate, process, store or transmit
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	pursuant to the Contract;
<b>"Government Procurement Card"</b>	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/governmentprocurement-card--2">https://www.gov.uk/government/publications/governmentprocurement-card--2</a> ;
<b>"Guarantor"</b>	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
<b>"Halifax Abuse Principle"</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	Her Majesty's Revenue and Customs;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;

<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <p>details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract; details of the cost of implementing the proposed Variation; details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the 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; a timetable for the implementation, together with any proposals for the testing of the Variation; and such other information as the Buyer may reasonably request in (or in response to) the Variation request;</p>
<b>"Implementation Plan"</b>	<p>the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;</p>

<b>"Incorporated Terms"</b>	<p>the contractual terms applicable to the Contract specified in the Award Form;</p>
<b>"Indemnifier"</b>	<p>a Party from whom an indemnity is sought under this Contract;</p>
<b>"Independent Controller"</b>	<p>a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;</p>
<b>"Indexation"</b>	<p>the adjustment of an amount or sum in accordance with the Award Form;</p>
<b>"Information"</b>	<p>has the meaning given under section 84 of the Freedom of Information Act 2000;</p>

<b>"Information Commissioner"</b>	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;
<b>"Initial Period"</b>	the initial term of the Contract specified in the Award Form;
<b>"Insolvency Event"</b>	<p>with respect to any person, means:</p> <p>that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>(being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>(being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent</p>

	<p>reconstruction of that person;</p> <p>another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; where that person is a company, an LLP or a partnership:</p> <p>a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>"Installation Works"</b>	<p>all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract;</p>

<b>"Intellectual Property Rights" or "IPR"</b>	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; 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 all other rights having equivalent or similar effect in any country or jurisdiction;
<b>"Invoicing Address"</b>	the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;
<b>"IP Completion Day"</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>"IPR Claim"</b>	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 Buyer in the fulfilment of its obligations under the Contract;
<b>"IR35"</b>	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: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
<b>"Joint Control"</b>	where two or more Controllers jointly determine the purposes and means of Processing;

<b>"Joint Controllers"</b>	where two or more Controllers jointly determine the purposes and means of Processing;
<b>"Key Staff"</b>	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	<p>any Subcontractor:</p> <p>which is relied upon to deliver any work package within the Deliverables in their entirety; and/or which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or with a Sub-Contract with the 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 Contract,</p> <p>and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</p>
<b>"Know-How"</b>	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 Start Date;
<b>"Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

<b>"Law Enforcement Processing"</b>	processing under Part 3 of the DPA 2018;
<b>"Losses"</b>	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 <b>"Loss"</b> shall be interpreted accordingly;
<b>"Marketing Contact"</b>	shall be the person identified in the Award Form;
<b>"Milestone"</b>	an event or task described in the Implementation Plan;
<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>"New IPR"</b>	<p>IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or</p> <p>IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same; but shall not include the Supplier's Existing IPR. Unless otherwise agreed in writing, any New IPR should be recorded in Schedule 36 and updated regularly;</p>
<b>"New IPR Item"</b>	means a deliverable, document, product or other item within which New IPR subsists;

<b>"Notifiable Default"</b>	<p>means:</p> <p>the Supplier commits a material Default; and/or</p> <p>the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</p>
<b>"Occasion of Tax Non – Compliance"</b>	<p>where:</p> <p>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</p>
	<p>be incorrect as a result of:</p> <p style="padding-left: 40px;">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;</p> <p style="padding-left: 40px;">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</p> <p>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;</p>

<p><b>"Open Book Data"</b></p>	<p>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 Contract, including details and all assumptions relating to: 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;</p> <p>operating expenditure relating to the provision of the Deliverables including an analysis showing:</p> <ul style="list-style-type: none"> <li>the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>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;</li> <li>a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>Reimbursable Expenses, if allowed under the Award Form;</li> </ul> <p>Overheads; all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables; the Supplier Profit achieved over the Contract Period and on an annual basis;</p>
	<p>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; 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 the actual Costs profile for each Service Period;</p>

<b>"Open Licence"</b>	means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-governmentlicence/version/3/">http://www.nationalarchives.gov.uk/doc/open-governmentlicence/version/3/</a> and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standardsprinciples/open-standards-principles">https://www.gov.uk/government/publications/open-standardsprinciples/open-standards-principles</a> ;
<b>"Open Licence Publication Material"</b>	means items created pursuant to the Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
<b>"Overhead"</b>	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";
<b>"Parent Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistleblower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-thewhistle-list-of-prescribed-people-and-bodies--2/whistleblowing-listof-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-thewhistle-list-of-prescribed-people-and-bodies--2/whistleblowing-listof-prescribed-people-and-bodies</a> ;

<b>"Processing"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Prohibited Acts"</b>	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:</p> <p style="padding-left: 40px;">induce that person to perform improperly a relevant function or activity; or</p> <p style="padding-left: 40px;">reward that person for improper performance of a relevant function or activity;</p> <p>(b) 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 the Contract; or (c) committing any offence:</p> <p style="padding-left: 40px;">under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p style="padding-left: 40px;">under legislation or common law concerning fraudulent acts; or</p> <p style="padding-left: 40px;">defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or</p> <p>(d) any activity, practice or conduct which would constitute one of</p>
	the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

<b>"Protective Measures"</b>	<p>technical and organisational measures which must take account of: the nature of the data to be protected harm that might result from Data Loss Event; state of technological development the cost of implementing any measures</p> <p>including 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;</p>
<b>"Public Sector Body "</b>	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
<b>"Recall"</b>	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 IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <p>full details of the Notifiable Default that has occurred, including a root cause analysis; the actual or anticipated effect of the Notifiable Default; and the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);</p>
<b>"Rectification Plan Process"</b>	the process set out in Clause 11;

<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
<b>"Reimbursable Expenses"</b>	<p>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:</p> <p>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 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;</p>
<b>"Relevant Requirements"</b>	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;
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Supplier"</b>	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;

<b>"Request For Information"</b>	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Action"</b>	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 (Insurance Requirements);
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;

<b>"Service Levels"</b>	any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
<b>"Service Period"</b>	has the meaning given to it in the Award Form;

<b>"Services"</b>	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: the Deliverables are (or are to be) provided; or the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)
<b>"SME"</b>	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;
<b>"Social Value"</b>	the additional social benefits that can be achieved in the delivery of the Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)
<b>"Social Value KPIs"</b>	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)
<b>"Social Value Report"</b>	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used

<b>"Special Terms"</b>	any additional terms and conditions set out in the Award Form incorporated into the Contract;
<b>"Special IPR Terms"</b>	any additional terms and conditions relating to IPR set out in the Award Form incorporated into the Contract;
<b>"Specific Change in Law"</b>	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;
<b>"Specification"</b>	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;
<b>"Standards"</b>	<p>any:</p> <p>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; standards detailed in the specification in Schedule 2 (Specification); standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time; relevant Government codes of practice and guidance applicable from time to time;</p>
<b>"Start Date"</b>	the date specified on the Award Form;
<b>"Step-In Process"</b>	the process set out in Clause 13;

<b>"Step-In Trigger Event"</b>	<p>means:</p> <p>the Supplier's level of performance constituting a Critical Service Level Failure; the Supplier committing a material Default which is irremediable; where a right of termination is expressly reserved in this Contract; an Insolvency Event occurring in respect of the Supplier or any Guarantor required under the Award Form; a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them; the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this</p>
	<p>agreement; the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary; the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or a need by the Buyer to take action to discharge a statutory duty;</p>
<b>"Step-Out Plan"</b>	<p>means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under the Contract following the completion of the Step-In Process;</p>
<b>"Storage Media"</b>	<p>the part of any device that is capable of storing and retrieving data;</p>
<b>"Sub-Contract"</b>	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <p>provides the Deliverables (or any part of them);</p> <p>provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</p>
<b>"Subcontractor"</b>	<p>any person other than the Supplier, who is a party to a SubContract and the servants or agents of that person;</p>

<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Subsidiary Undertaking"</b>	has the meaning set out in section 1162 of the Companies Act 2006;
<b>"Supplier"</b>	the person, firm or company identified in the Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;

<b>"Supplier Equipment"</b>	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 Contract;
<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Supplier Existing IPR Licence"</b>	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Para 1.3 of Schedule 36.
<b>"Supplier Group"</b>	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
<b>"Supplier Non-Performance"</b>	<p>where the Supplier has failed to:</p> <p>Achieve a Milestone by its Milestone Date;</p> <p>provide the Goods and/or Services in accordance with the Service Levels ; and/or comply with an obligation under the Contract;</p>

<b>"Supplier Profit"</b>	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 the Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	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;
<b>"Supplier Staff"</b>	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 the Contract;
<b>"Supplier's Confidential Information"</b>	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;

	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 the Contract;  Information derived from any of (a) and (b) above;
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of the 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;
<b>"Supply Chain Information Report Template"</b>	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
<b>"Supporting Documentation"</b>	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 Contract detailed in the information are properly payable;

<b>"Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
<b>"Termination Notice"</b>	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 the Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
<b>"Test Plan"</b>	a plan: (a) for the Testing of the Deliverables; and

	(b) setting out other agreed criteria related to the achievement of Milestones;
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>"Third Party IPR Licence"</b>	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36

<b>"Transparency Information"</b>	the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for –  (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and  (b) Commercially Sensitive Information;
<b>"Transparency Reports"</b>	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
<b>"UK GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019
<b>"Variation"</b>	means a variation to the Contract;
<b>"Variation Form"</b>	the form set out in Schedule 21 (Variation Form);

<b>"Variation Procedure"</b>	the procedure set out in Clause 28 (Changing the contract);
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Verification Period"</b>	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);

<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	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;
<b>"Worker"</b>	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) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables; and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

## Schedule 6 (Transparency Reports)

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.

Without prejudice to the Supplier's reporting requirements set out in the 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.

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.

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 - **TBC**

Title	Content	Format	Frequency
Performance	To be agreed	To be agreed	Monthly
Charges	To be agreed	To be agreed	Monthly
Key Subcontractors	To be agreed	To be agreed	Monthly
Technical	To be agreed	To be agreed	Monthly
Performance management	To be agreed	To be agreed	Monthly

## **Schedule 20 (Processing Data)**

### **Status of the Controller**

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 2018. A Party may act as:

“Controller” in respect of the other Party who is “Processor”;

“Processor” in respect of the other Party who is “Controller”;

“Joint Controller” with the other Party;

“Independent Controller” of the Personal Data where the 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**

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.

The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

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

The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

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 notify the Controller before Processing the Personal Data unless prohibited by Law; ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 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:

nature of the data to be protected; harm that might result from a Personal Data Breach; state of technological development; and cost of implementing any measures; ensure that:

the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*)); it uses all reasonable endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);

are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;

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 have undergone adequate training in the use, care, protection and handling of Personal Data;

not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "**IDTA**"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time, as well as any additional measures determined by the Controller;

the Data Subject has enforceable rights and effective legal remedies; 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 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; where the Personal Data is subject to EU GDPR, 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:

the transfer is in accordance with Article 45 of the EU GDPR; or the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party; the Data Subject has enforceable rights and effective legal remedies; the transferring Party 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 nontransferring Party in meeting its obligations); and

the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and 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.

Subject to Paragraph **Error! Reference source not found.** of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:

receives a Data Subject Access Request (or purported Data Subject Access Request);

receives a request to rectify, block or erase any Personal Data;

receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract; 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 becomes aware of a Personal Data Breach.

The Processor's obligation to notify under Paragraph **Error! Reference source not found.** of this Schedule 20 shall include the provision of further information to the Controller, as details become available.

Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph **Error! Reference source not found.** of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:

the Controller with full details and copies of the complaint, communication or request; such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

the Controller, at its request, with any Personal Data it holds in relation to a Data Subject; assistance as requested by the Controller following any Personal Data Breach; and/or

assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.

The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

the Controller determines that the Processing is not occasional; the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

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

The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must: notify the Controller in writing of the intended Subprocessor and Processing; obtain the written consent of the Controller; enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.

The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.

The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 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).

The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer 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**

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 UK GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 20 (*Processing Data*).

## **Independent Controllers of Personal Data**

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.

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.

Where a Party has provided Personal Data to the other Party in accordance with Paragraph **Error! Reference source not found.** of this Schedule 20 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.

The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.

The Parties shall only provide Personal Data to each other:

to the extent necessary to perform their respective obligations under the Contract; 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 UK GDPR); and where it has recorded it in Annex 1 (*Processing Personal Data*).

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 UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

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**"):

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 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:

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

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.

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:

do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;

implement any measures necessary to restore the security of any compromised Personal Data;

work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and 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.

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*).

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*).

Notwithstanding the general application of Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** of this Schedule 20 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 Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** of this Schedule 20.

## **Annex 1 - Processing Personal Data**

This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.

The contact details of the Buyer's Data Protection Officer are: **TBC**

The contact details of the Supplier's Data Protection Officer are: **TBC**

The Processor shall comply with any further written instructions with respect to Processing by the Controller.

Any such further instructions shall be incorporated into this Annex.

Description	Details
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<p>Identity of Controller for each Category of Personal Data</p>	<p><b>The Buyer is Controller and the Supplier is Processor</b>  The Parties acknowledge that in accordance with Paragraph <b>Error! Reference source not found.</b> and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• Names</li> <li>• Addresses</li> <li>• Telephone numbers</li> <li>• Email addresses</li> <li>• Job role</li> <li>• School</li> <li>• Academy or organisation name</li> <li>• Reference numbers</li> <li>• Grant Funding</li> </ul> <p><b>The Supplier is Controller and the Buyer is Processor</b>  The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with Paragraph <b>Error! Reference source not found.</b> of the following Personal Data:</p>
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	<p>Not applicable</p> <ul style="list-style-type: none"> <li>• Names</li> <li>• Addresses</li> <li>• Telephone numbers</li> <li>• Email addresses</li> <li>• Job role</li> <li>• School</li> <li>• Academy or organisation name</li> <li>• Reference numbers</li> <li>• Grant Funding</li> </ul> <p><b>The Parties are Joint Controllers</b></p> <p>Not applicable</p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> <li>• Names</li> <li>• Addresses</li> <li>• Telephone numbers</li> <li>• Email addresses</li> <li>• Job role</li> <li>• School</li> <li>• Academy or organisation name</li> <li>• Reference numbers</li> <li>• Grant Funding</li> </ul> <p><b>The Parties are Independent Controllers of Personal Data</b></p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p><i>Business contact details of Supplier Personnel for which the Supplier is the Controller,</i></p> <p><i>Business contact details of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer's duties under the Contract) for which the Buyer is the Controller.</i></p> <p>Not applicable</p> <ul style="list-style-type: none"> <li>• Names</li> </ul>
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	<ul style="list-style-type: none"> <li>• Addresses</li> <li>• Telephone numbers</li> <li>• Email addresses</li> <li>• Job role</li> <li>• School</li> <li>• Academy or organisation name</li> <li>• Reference numbers</li> <li>• Grant Funding</li> </ul>
Duration of the Processing	Duration of the contract
Nature and purposes of the Processing	As defined in the Invitation to Tender Document (ITT)
Type of Personal Data	<ul style="list-style-type: none"> <li>• Names</li> <li>• Addresses</li> <li>• Telephone numbers</li> <li>• Email addresses</li> <li>• Job role</li> <li>• School</li> <li>• Academy or organisation name</li> <li>• Reference numbers</li> <li>• Grant Funding</li> </ul>
Categories of Data Subject	<p>For any information processed for any individual in the following areas:</p> <ul style="list-style-type: none"> <li>• Schools and their employees and students</li> <li>• Academy or organisation and their employees and students,</li> <li>• Department for Education and their employees and agents,</li> <li>• Arm's Length Bodies and their employees,</li> <li>• Any other individuals and organisations involved in the project.</li> </ul>

Plan for return and destruction of the data once the Processing is complete UNLESS requirement under law to preserve that type of data	Within three months of the contract end date.
Locations at which the Supplier and/or its Subcontractors process Personal Data under this Contract	<b>TBC</b>
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	<b>TBC</b>

## Annex 2 - Joint Controller Agreement

### Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraph **Error! Reference source not found.** of this Schedule 20 (Where one Party is Controller and the other Party is Processor) and Paragraphs **Error! Reference source not found.** - **Error! Reference source not found.** of this Schedule 20 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the Supplier:

- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using all reasonable endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- 1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Supplier's privacy policy (which must be readily available by hyperlink or

otherwise on all of its public facing services and marketing).

- 1.3 Notwithstanding the terms of Paragraph **Error! Reference source not found.**, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

1.4

#### **Undertakings of both Parties**

The Supplier and the Buyer each undertake that they shall: report to the other Party every month on:

the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf); the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data; any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation; any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of the Contract during that period;

notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.**; provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation; not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex; request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information; ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful

Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

use all reasonable endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation; ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the: nature of the data to be protected; harm that might result from a Personal Data Breach; state of technological development; and cost of implementing any measures; ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach; where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or

the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement (the “**IDTA**”), or International Data Transfer Agreement

Addendum to the European Commission’s SCCs (the “**Addendum**”), as published by the Information Commissioner’s Office from time to time, as well as any additional measures; the Data Subject has enforceable rights and effective legal remedies; the transferring Party 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 nontransferring Party in meeting its obligations); and the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written

consent of non-transferring Party has been obtained and the following conditions are fulfilled:

the transfer is in accordance with Article 45 of the EU GDPR; or the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU as well as any additional measures;

the Data Subject has enforceable rights and effective legal remedies; the transferring Party complies with its obligations under the EU GDPR 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 non-transferring Party in meeting its obligations); and the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

## **Data Protection Breach**

Without prejudice to Paragraph **Error! Reference source not found.**, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Buyer and its advisors with:

sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; all reasonable assistance, including:

co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance; co-operation with the other Party including using such reasonable endeavours as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach; co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with

complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph **Error! Reference source not found.**

Each Party shall use all reasonable endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

the nature of the Personal Data Breach; the

nature of Personal Data affected;

the categories and number of Data Subjects concerned; the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained; measures taken or proposed to be taken to address the Personal Data Breach; and describe the likely consequences of the Personal Data Breach.

## **Audit**

The Supplier shall permit:

the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph **Error! Reference source not found.** in lieu of conducting such an audit, assessment or inspection. **Impact Assessments**

The Parties shall:

provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information

and assessments in relation to Processing operations, risks and measures); and maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

### **ICO Guidance**

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

### **Liabilities for Data Protection Breach**

If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (Resolving disputes).

If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data

Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;

if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and if responsibility for the relevant Personal Data Breach is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

Nothing in either Paragraph or Paragraph **Error! Reference source not found.** shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

## **Termination**

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Buyer shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 14 of the Core Terms (Ending the contract). **Sub-Processing**

In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by the Contract), and taking all

further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## Schedule 2 (Specification)

### SPECIFICATION

#### Introduction

The Department is looking to procure a high-profile, prestigious national lead provider, or consortia, to design and deliver the **National Education Nature Park (NP)** and **Climate Leaders Award (CLA)** as announced by the Secretary of State at COP26 in November 2021 - contract period being 2 years initially, with the Department able to extend by a further 3 years in one year increments.

In addition, the successful lead provider or consortia will compile climate education resources and/or quality assure existing materials, for each of the key stages from early to Higher Education, and be able to demonstrate how they would manage and co-ordinate grant funding to support successful participation and delivery of the Nature Park.

#### Background

We are facing biodiversity and climate crises. These will affect everyone and require action from all. The time to act is now. The Environment Bill (2021) puts the environment at the heart of policy-making and calls for the halt of the decline of nature. The Dasgupta Review (2021) calls on governments to invest in their natural capital and highlights the importance of

education, whilst COP26 highlighted the challenges we face and the enormous desire for change particularly amongst young people.

Our lives are reliant on the natural world – we are not separate from it but part of it. Biodiversity provides important ecosystem services; reversing biodiversity loss and building biodiversity are crucial steps in response to the climate crisis and reaching net zero, and connecting people with nature supports pro-environmental actions and wellbeing. However, the UK is amongst the most nature-depleted countries in the world.

In addition, education and the development of green skills and well-paid green careers will be at the forefront of tackling the climate crisis. From nuclear engineers, experts in carbon trading through to construction professionals.

A report from the Institute of Engineering and Technology reports there is currently a shortfall of 173,000 skilled STEM workers in the UK. The need for new STEM roles is expected to double in the next 10 years, within the green economy.

To develop and drive a sustainability strategy for the Education and Children's Services system, the Department for Education (DfE) has established a Sustainability and Climate Change Unit (S&CCU). Inspired by the Dasgupta Review, the S&CCU are looking to develop a new National Education Nature Park and Climate Leaders Award Scheme. These initiatives draw on the considerable reach of education providers and the substantial size of the combined education estate – England's primary and secondary schools alone cover an estimated 626km<sup>2</sup>, an area twice the size of Birmingham – to deliver education, action and change that will benefit young people today and in generations to come.

At the climate summit in November 2021 (COP26), the Secretary of State announced two important initiatives; the National Education Nature Park and the Climate Leaders Award. Their aim is to give children and young people the skills, knowledge and love of nature that will help equip them for their future studies and careers in a world where climate change and our resilience to it is becoming a reality.

The following videos highlight what was announced at COP26 and sets out the vision for both initiatives:

- (c) Video of the Secretary of State for Education launching the NP & CLA launch at COP26 in November - [Climate Leaders Award and National Education Nature Park - YouTube](#)
- (d) Animation video used at the launch to explain both initiatives  
<https://design102.wistia.com/medias/ksl8q4file>

To support the development of the National Education Nature Park and the Award, the Department contracted the Natural History Museum to conduct a rapid evidence review, which concluded in Autumn 2021. This review assessed the evidence and identified key

questions and recommendations. **We strongly recommend that bidding organisations read the report which provides a comprehensive appraisal with delivery considerations for both initiatives.** To obtain a copy, please email us [dfesustainability@education.gov.uk](mailto:dfesustainability@education.gov.uk).

In April 2021, the Department launched its strategy which sets out the important role education has to play in all aspects of sustainability and how the UK education sector is to become a world leader in climate change by 2030 - Sustainability and climate change strategy - GOV.UK ([www.gov.uk](http://www.gov.uk))<sup>[OBJ]</sup>. The Department's Sustainability and Climate Change Strategy has four strategic outcomes:

Excellence in education and skills for the changing world  
Net Zero by 2050  
Resilient to Climate Change

A better environment for future generations

While this tender focuses on the area of creating a better environment for future generations and excellence in education and skills, it will also contribute to the other strategic aims. We know there are many impressive organisations working to improve sustainability and mitigate against climate change, so we will be seeking a contractor who will take opportunities to:

- work with others who share our objectives
- extend and amplify existing good practice and initiatives
- deliver initiatives through others to ensure that they are making best use of the skills and expertise of others.

## **The Scope of opportunity**

The Department is looking for a successful lead provider, or consortia, to successfully deliver the following key areas of activity:

A prestigious **National Education Nature Park** that will drive and increase in engagement with nature for all children and young people whilst also developing their scientific, analytical and biodiversity skills for future studies and careers alongside driving an improvement in the biodiversity of the education estate. It will have an engaging digital presence that will inspire children, young people and teachers to participate with the range of activities it has developed and curated from various stakeholders. It will have a credible, high profile and prestigious presence amongst education and children's services providers and biodiversity stakeholders. Over time, it will become the main portal through which the education system looks for advice, guidance and learning resources on this important issue and on climate

change more broadly. It will be important that the successful provider has a lead public facing figure for the programme.

A well-respected **Climate Leaders Award** recognised by employers and further and higher education providers that will increase and recognise the efforts of young people in improving the biodiversity of the education estate and their communities, as well as helping to develop their analytical, scientific, biodiversity and sustainable technology skills through a structured, accredited programme of activity in conjunction with the development of the Nature Park.

Alongside the two main programme initiatives listed above, the successful provider and/or consortia, will also be required to:

Develop **climate education resources** for each of the key stages, from early years through to further education. Resources to either be produced from new and/or quality assuring existing materials. Resources to then be made available and accessible to educational institutions on a Nature Park online hub, at least in the short-term (note: a medium to longer term online presence may be considered and the Department will work collaboratively with the successful provider as and when more strategic decisions are made on material hosting).

Be able to **administer grants** on behalf of the Department to support participation and engagement in the Nature Park – activity is subject to the Department securing additional funding and a subsequent variation to this Agreement being agreed by both parties in writing relating to such grant administration. The costing matrix template asks bidding organisations to define the percentage management fee charge which the provider (or sub-contractor within their consortia) would charge should such funding grants be made available. All grant funding will need to be managed and assured in line with government requirements which would be clearly outlined by the Department.

The successful contractor will also work with the organisation responsible for the development and administration of a geospatial data hub that will enable children and young people and education providers to understand the current biodiversity of their site and measure, record and track biodiversity improvement over time. **At the time of this tender issue, a provider will be in the process of being appointed.**

The successful contractor will be collaborative and work with the many providers in the sector to achieve the objectives. For example, the **Climate Leaders Award (CLA)** will act as an 'umbrella' and build upon all the many excellent existing awards and activities that stakeholders currently provide. The initiatives must also be appropriate and engaging for each sector of the education system. It will therefore be important for bidding organisations to set out how the NP and Award would look for each phase of learning from early years to higher education and how a child/young person would progress and stretch their learning through each phase.

The successful contractor must work to co-produce the Park and Award in close collaboration with children and young people. We would expect to see young people user group and stakeholder forums as part of a successful tender to ensure that the initiatives will engage and inspire their audience. For example, the title 'Climate Leaders Award'

has generated feedback through stakeholder discussions. As a result, it remains a working title pending the successful contractors discussions with stakeholders and children and young people.

The Departments' expectation is that the Nature Park hub will contain a database of **climate education resources** connected to Sustainability and Climate Change for teachers or early years practitioners etc to use in class.

We envisage the 2022-2023 academic year the contractor would be writing, testing and piloting the materials, for full roll-out for the 2023-2024 academic year. Some of these materials may already be available through the contractor or by working in partnership with other providers. The following principles apply:

2. Materials are needed for early years, primary, secondary and further education (FE) phases.
3. Materials will be made freely available to teachers.
4. Materials should cover a majority of subjects, not restricted to those where climate change is already taught (science, geography and citizenship). In FE, materials should be aligned to T level subjects. **A list is provided on the next page and we would like bidding organisations to define their approach to compiling a substantial proportion, if not all from that list.**
5. Materials should be produced for a number of lessons for each subject and age group. **We suggest 6 hours for each subject as a minimum benchmark.**
6. Materials are not required for the new natural history GCSE.
7. Materials must be aligned to the curriculum for whichever subject they are designed for. This should be flagged in the database and the resources should be searchable by subject, and key stage.
8. Materials should have full guidance for teachers, including ideas for appropriate adaptation, how to teach the material as a coherent unit, or to use it split over multiple classes, and in particular for ways to teach with them outdoors.

Proposed list of subject areas for climate education resources:

Early Years: something in each of the 7 areas of learning

Communication and language

Personal and social development

Physical development

Literacy

Mathematics

Understanding the world

Expressive arts and design

Primary: something in each of the compulsory subjects

English maths science  
 design and  
 technology  
 history  
 geography art  
 and design  
 music  
 physical education (PE), including swimming  
 computing  
 ancient and modern foreign languages (at key stage 2) plus  
 Citizenship

Secondary (Key Stage 3): something in each of the compulsory subjects

English maths science  
 history geography  
 modern foreign  
 languages design and  
 technology art and design  
 music

physical education  
 citizenship  
 computing

Secondary (Key Stage 4): something in each of the EBacc subjects

English language and literature  
 maths the  
 sciences history,  
 geography a  
 language  
 (plus citizenship)

Secondary (A levels): something for each of the most popular and  
 facilitative subjects

Most popular Mathematics

Psychology

Biology

Chemistry

History

English Literature

Sociology

Physics

Business Studies

Economics

Plus some other facilitative subjects Modern

languages

Geography

Further education: something for each of the T level subjects (including all those to start by 2023) – but materials which can be applied for more than one subject may be appropriate design, surveying and planning for construction digital production, design and development education and childcare

building services engineering for  
construction digital business services digital  
support and services health healthcare  
science onsite construction science  
accounting  
design and development for engineering and  
manufacturing engineering, manufacturing, processing and  
control finance  
maintenance, installation and repair for engineering  
and manufacturing management and administration  
animal care and management

agriculture, land management and production  
catering craft and design hair, beauty and  
aesthetics legal services  
media, broadcast and production

#### **4.0 Requirements**

The Department for Education is seeking an experienced and highly credible national lead provider, or consortia, to design, deliver and administer all activity associated with both initiatives, as set out in this tender. Any organisation (consortium) wishing to bid for only part of the requirements listed within this tender will not be considered.

Further mandatory requirements include the lead provider, or consortia, being able to deliver these initiatives initially across all of England and have experience of working with educational settings and/or children and young people. We ask consideration is made that overtime this has the potential to expand to the whole of the UK, subject to further negotiations with the Devolved Governments.

The Natural History Museum's Rapid Evidence provides a comprehensive review of the delivery considerations which we ask bidding organisations to reference and build upon within their responses.

A representative of the successful provider must actively engage with a geospatial mapping provider also being procured by the Department for a period of up to three (3) days (up to twenty-one (21) hours in aggregate at daily rate of £681 including VAT). Their role to develop and embed a platform for educational settings (early years right through to University) to initially capture bio-diversity data, but later including flood resilience and emissions data from educational settings for baselining

and subsequent tracking and monitoring overtime. The linkage between these two elements of the programme will be critical. If representatives of the successful provider are required to engage with the geospatial mapping provider for more than the twenty-one (21) aggregate hours, the parties shall negotiate in good faith a reasonable additional fee with the Department to compensate the successful provider for such additional work.

The successful organisation must also be willing to actively engage with an external evaluation body, being procured by the Department, whose role it will be to independently evaluate outcomes and impact of all elements of the Nature Park and Climate Leaders Award. In doing so, they will contribute to lessons learned during the period of the contract to enhance the offer and usability of the product/tools on offer.

The Department is keen for the successful provider, or consortia, to encourage sponsorship, where possible, to compliment successful delivery of the NP & CLA deliverables. It is essential that any potential sponsorship arrangements are presented to the Department for consideration and approval prior to any agreements being reached or activity and funding agreed. A process for this will be agreed on contract award.

## **5.0 Key Deliverables for initial 3yrs:**

### **Year 1 (Academic Year Sept 22 to July23)**

- (II) Provider to develop and launch the Nature Park with a digital presence/online hub for the Nature Park. The provider to create a landing page for resources to be hosted.
- (III) Provider to commence a communications and marketing campaign to promote the NP and Award and encourage participation from children and young people in all educational sectors (early years to Higher Education) in England. This is likely to include working with stakeholders and high-profile personalities to showcase 'a festival of activity' over the autumn term, staging visits to early providers, schools and colleges working with the media to grow the momentum of participation. The Department will work collaboratively with the successful provider to complement their marketing and communications plan throughout the lifetime of the contract, utilising its links with the sector and existing marketing/PR channels.
- (IV) Work collaboratively with key players in the sustainability and climate change space (as highlighted in the Natural History Museum's Rapid Evidence) to galvanise collaboration and partnership to drive participation and engagement. We expect to

see participants commence activity within the Awards framework in Year 1, to be ready to be received by year 2.

- (V) Develop the framework, content and undertake any necessary piloting of the Climate Leaders Award during the first year of the contract working collaboratively with the Department to engage relevant stakeholders.
- (VI) Commence the development of high-quality climate education resources and/or quality assure existing material already compiled. Resources to be created for early years and each of the key stages (to be made available on the new provider landing page initially).
- (VII) Agree deliverables and KPIs with DfE for year 2 (Sept 2023 – August 2024)
- (VIII) Continuous Improvement plan outlined (QA existing materials and keep them up-to-date and reflective of latest research/geopolitical issues)
- (IX) User groups, including those with young people and stakeholders, are established and providing valuable insights about how to grow participation for all;
- (X) Work with the evaluator to ensure that an objective baseline is established and a strategy for evaluating activity is in place.

**Year 2:** (Academic Year Sept 2023 to July 2024)

Commence roll out of the Award investigate/explore accreditation opportunities (recognition for action = UCAS points)

Pilot activity that may be needed to engage harder to reach groups e.g. urban schools / levelling up areas / disadvantaged pupils

Continue to further develop climate education resource content and an inspiring and popular digital presence

Devise an approach for how awards are made and celebrated, with the first award events taking place in this year.

Participation in geospatial mapping is growing and inspiring children and young people to increase the biodiversity of the education estate.

**Year 3:** (Academic Year Sept 24 to 31 March 25 – end of Spending Review allocation period)

Substantial rollout / significant engagement/participation of the Nature Park and Award with metrics to be agreed with DfE. It is anticipated, however, that over time, every child will have participated in some substantive activities of the Park and Award during their education career. As such, by the third year, participation levels are of a high volume and indicative that this goal will be achieved before any child that is currently in the early years leaves the education system.

The approach to how the Award is given and celebrated is established and attracting vibrant media interest.

Continue to further develop and update climate education resources and digital content with upward trajectory levels of participation.

Bespoke interventions are underway to ensure that any issues of lower participation from any particular groups, highlighted by evaluation and data, are underway.

Emerging geospatial data indicates improvements in participating early years providers, schools and colleges.

The Park is increasingly perceived in the education sector and wider community, including internationally, as the leader on climate education.

KPIs for **Years 4 and 5** would be agreed at the end of Year 3.

It is a requirement that bidding organisations detail their planned trajectory for engagement and participation in the Park over the initial three years, detailing how economies of scale and value for money will be achieved from the activity undertaken and delivered. Bidders are asked to provide this information when completing the cost matrix template.

## **6.0 Measuring the impact of the programme**

The successful delivery provider should develop and deliver a strategy for measuring the impact of the programme. The strategy should be agreed with the Department, and should identify success measures for the programme, and provide details for when and how progress will be measured against them. The Department will also have Key Performance Indicators (KPIs) against which the delivery provider will be assessed, and the delivery provider should expect to provide the data to support this process and collaborate with the independent evaluator.

The successful contractor should collect the relevant data to measure progress against success measures and KPIs and ensure that all data-related processes are compliant with the Data Protection Act. To support the effective assessment of the programme's

impact, the successful contractor should be willing to work with any independent evaluation of the programme.

## 7.0 Project and risk management

### Management structure

The delivery provider should establish a management structure that is fit for purpose and appropriate to deliver a programme of this scope and scale. The management structure should include appropriately qualified and experienced staff in all key positions, and absolute clarity about roles, responsibility and accountability.

The delivery provider should have a strategy for managing their resources over the lifetime of the contract. *Please provide a copy of your **organisational chart** as part of your bidding documentation including names, key roles of individuals and proportion of their time allocated to this programme.*

### Project plan and delivery

The delivery provider should have a delivery plan that includes relevant and achievable milestones to support successful delivery. The plan should support the delivery of the programme from contract award and should reflect all relevant activity and outputs that will contribute to the success of the programme.

*Please provide a copy of your **project plan** as part of your bidding documentation*

### Risks and issues

The delivery provider should have a clear strategy for managing risks and issues. There should be a process for identifying, managing, mitigating and escalating risks. There should also be an understanding of the trigger points that will turn a risk into an issue, and the impact this will have on the programme. Risk and issue logs should be shared with the Department on a regular and agreed basis.

The delivery provider should have established contingency plans and an intervention strategy that will be adopted in the case of delivery failure at either individual school or programme level.

*Please provide a copy of your **risk/issues register** as part of your bidding documentation with consideration for key risks and mitigations.*

### Stakeholder management

The delivery provider will be required to develop advanced stakeholder management processes, including the mapping of key stakeholders. The delivery provider will need a

strategy for stakeholder engagement that supports the delivery of the programme at local and national level.

The delivery provider should build on their existing networks to support the delivery of the programme but should also identify and build new networks amongst groups of stakeholders and areas of the country where their relationships may not be as well developed.

## **8.0 Publicity and Branding**

The Supplier shall not:

make any press announcements or publicise this Contract or its contents in any way; or

use the Buyer's name or brand in any promotion or marketing or announcement of orders without the prior written consent of the Buyer, which shall not be unreasonably withheld or delayed.

Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Deliverables) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **9.0 Management Information**

The successful tenderer will be asked to provide management information to meet the needs of the Department. The minimum information needs are:

Success of the Nature Park and Climate Leaders Award policy will be determined through a wider benefits management strategy, underpinned by an overarching theory of change, of which the mapping tool will be a part.

Part of the success of the overall initiative will depend upon engagement with the biodiversity mapping tool and outcomes registered within it.

As a result, management information on both the mapping tool itself (standard measures such as uptime, performance, usage) and the collected data and associated analysis by which to judge progress against the intended policy objectives such as increases in biodiversity, changes in land use or other specific criteria as required. This will also include links to projects undertaken by users and stakeholders which there may be a requirement to provide information against as well, depending on the nature of data collection (pupil, class or school level).

It is expected that the successful supplier will work with DfE during the development of the wider Park and Award to iterate the data ask through the life of the contract.

## **10 Security of Data**

The successful tenderer will have to ensure data generated and stored is kept securely per the Departmental standard requirements and content of Attachment 3 of this pack.

## **11 Costs**

A cost matrix template is included to be completed by bidding organisations which will be evaluated based on a value-for-money assessment.

If your tender is based on the assumption of any charges for participants for the Park or the Award, we ask that these are set out clearly. Please be aware that any uplifts to charges will need to be agreed with the Department.

Please give a detailed breakdown of costs using the cost matrix template provided.

Payments will be made by BACS transfer following receipt of a valid invoice.

## **12 VAT**

Please state clearly when submitting prices whether or not VAT will be charged.

Where the contract price agreed between the Department and contractor is inclusive of any VAT, further amounts will not be paid by the Department should a vatable supply claim be made at any later stage.

Where the overall contract price is exclusive of VAT, the Department will pay any VAT incurred at the prevailing rate (currently 20%). If the VAT rate changes the Department will pay any VAT incurred at the new rate.

It is the responsibility of tenderers to check the VAT position with HMRC before submitting a bid.

## **13 Contract Management**

The Contractor will:

use robust governance and contract management arrangements to: monitor and manage its performance to ensure successful delivery; maintain the quality of the delivery of all Services provided by the Contractor and all of its partners and sub-contractors; and ensure that all aspects of their processes adhere to statutory legal requirements for equality and

diversity; further information about the Equality Act is available at <https://www.gov.uk/guidance/equality-act-2010-guidance>.

ensure that there are simple and clear governance controls for the management and distribution of funds, including those transferred to delivery partners;

participate in regular contract management meetings to be agreed at contract award submit an Exit Plan that is to be agreed with the Authority within three months of the Effective Date; and will be reviewed regularly thereafter to ensure it remains fit for purpose. The Exit Plan must include, but is not limited to, the following areas:

Exit management structures and processes

Assets

Systems and Software

Data

Subcontracts

Training and knowledge transfer; and Staff matters.

#### **14 Supply Chain**

You must state if you will be using any third party contractors to deliver elements of the requirements and ensure that all relevant terms and conditions are applied within any relevant sub-contract. You will be fully responsible as the prime contractor for all third party sub-contractors.

## **Schedule 3 (Charges)**



## Schedule 5 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

1.1 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.

1.2 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 Award Form (which shall be deemed incorporated into the table below).

1.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No	Date	Items	Duration of Confidentiality
	Insert date	Insert details	Insert duration


## **Schedule 4 (Tender)**

Please refer to Schedule 2

## **Schedule 10 (Service Levels) –**

**To be discussed and agreed in writing 60 days after contract commencement date. Below is drafting wording for discussion.**

## DEFINITIONS

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

<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Award Form;
<b>"Service Credits"</b>	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;
<b>"Service Credit Cap"</b>	has the meaning given to it in the Award Form;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
<b>"Service Level Threshold"</b>	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 also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).

Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date; the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and there is no change to the Service Credit Cap. **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 0 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.

## Part A: Service Levels and Service Credits

### SERVICE LEVELS

If the level of performance of the Supplier: is likely to or fails to meet any Service Level Performance Measure; or is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

instruct the Supplier to comply with the Rectification Plan Process; if a Service Level Failure has occurred, deduct the applicable Service Level

Credits payable by the Supplier to the Buyer; and/or if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

### SERVICE CREDITS

The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

## Part B: Performance Monitoring

### PERFORMANCE MONITORING AND PERFORMANCE REVIEW

Within twenty (20) Working Days of the Start Date the Supplier shall provide the

Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph **Error! Reference source not found.** of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;

a summary of all failures to achieve Service Levels that occurred during that Service Period; details of any Critical Service Level Failures; for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;

the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and such other details as the Buyer may reasonably require from time to time.

The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:

take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require; be attended by the Supplier's Representative and the Buyer's Representative; and be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.

The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.

The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

## **SATISFACTION SURVEYS**

The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

## **Schedule 13 (Contract Management)**

### **1. DEFINITIONS**

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

<b>"Operational Board"</b>	the board established in accordance with Paragraph 4.1 of this Schedule;
<b>"Project Manager"</b>	the manager appointed in accordance with Paragraph 2.1 of this Schedule;

## **2. PROJECT MANAGEMENT**

- 2.1 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.
- 2.2 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.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

## **3. ROLE OF THE SUPPLIER PROJECT MANAGER**

- 3.1 The Supplier Project Manager shall be:
  - 3.1.1 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;
  - 3.1.2 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 delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position himself; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

## **4. ROLE OF THE OPERATIONAL BOARD**

- 4.1 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.

- 4.2 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 Annex A to the Schedule.
- 4.3 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
- 4.4 equivalent seniority and expertise.
- 4.5 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.
- 4.6 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.

## **5. CONTRACT RISK MANAGEMENT**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
- 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues;
  - and
  - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

## **Annex: Operational Boards –**

### **To be confirmed at pre- contract meeting**

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

## Schedule 16 (Security)

### Short Form Security Requirements DEFINITIONS

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

<b>"Breach of Security"</b>	<p>the occurrence of:</p> <ul style="list-style-type: none"><li>a) any unauthorised access to or use of the 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/or</li><li>b) the 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 Policy where the Buyer has required compliance there with in accordance with Paragraph 0;</li></ul>
<b>"Security Management Plan"</b>	<p>the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.</p>

### COMPLYING WITH SECURITY REQUIREMENTS AND UPDATES TO THEM

The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.

If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables

it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.

Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

## **SECURITY STANDARDS**

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 security.

The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

is in accordance with the Law and this Contract; as a minimum demonstrates Good Industry Practice; meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and

where specified by the Buyer in accordance with Paragraph 0 complies with the Security Policy and the ICT Policy.

The references to standards, guidance and policies contained or set out in Paragraph 0 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 of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

## **SECURITY MANAGEMENT PLAN Introduction**

The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

## **Content of the Security Management Plan The**

Security Management Plan shall:

comply with the principles of security set out in Paragraph 0 and any other provisions of this Contract relevant to security; identify the necessary delegated organisational

roles for those responsible for ensuring it 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 Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites 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; 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, 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 provision of the Goods and/or Services and shall 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 Contract;

set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with the Security Policy as set out in Paragraph 0 ; and be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

### **Development of the Security Management Plan**

Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 0, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

If the Security Management Plan submitted to the Buyer in accordance with Paragraph 0, or any subsequent revision to it in accordance with Paragraph 0, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will 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 its first submission to the Buyer. If the Buyer does not approve the Security Management

Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 0. However, a refusal by the Buyer 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 to the Security Management Plan in accordance with Paragraph 0 shall not relieve the Supplier of its obligations under this Schedule.

#### **Amendment of the Security Management Plan**

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

emerging changes in Good Industry Practice;  
any change or proposed change to the Deliverables and/or associated processes;  
where necessary in accordance with Paragraph 0, any change to the Security Policy;  
any new perceived or changed security threats; and any reasonable change in requirements 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 amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include:

suggested improvements to the effectiveness of the Security Management Plan;  
updates to the risk assessments; and suggested improvements in measuring the effectiveness of controls.

Subject to Paragraph 0, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 0, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.

The Buyer may, acting reasonably, Approve and require changes or amendments to the 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 BREACH**

Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) 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 use all reasonable endeavours (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 to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security; prevent an equivalent breach in the future exploiting the same cause failure; and as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a 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 Security Management Plan with the Security Policy (where relevant in accordance with Paragraph 0 ) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

## **Schedule 19 (Cyber Essentials Scheme)**

### **1. DEFINITIONS**

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

<b>"Cyber Essentials Scheme"</b>	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: <a href="https://www.gov.uk/government/publications/cyber-essentials-schemeoverview">https://www.gov.uk/government/publications/cyber-essentials-schemeoverview</a>
<b>"Cyber Essentials Basic Certificate"</b>	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Certificate"</b>	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form
<b>"Cyber Essential Scheme Data"</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme
<b>"Cyber Essentials Plus Certificate"</b>	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

## 2. WHAT CERTIFICATION DO YOU NEED

### 2.1 Where the Award Form requires that the Supplier provide a Cyber

Essentials Certificate prior to the commencement of the contract the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Both parties have agreed that the Supplier is working towards a Cyber Essentials Certificate. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Deliverables under the

Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.

2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period of the Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.

2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the Start date of the Contract but before the end of the Contract Period, the Supplier shall deliver to the Buyer evidence of:

2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and

2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.

2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for material Default.

2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.

2.6 This Schedule shall survive termination or expiry of this Contract.

## **Schedule 22 (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 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 Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and

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 until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be 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 Buyer shall be indemnified in respect of claims made against the Buyer 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 Buyer 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 Buyer, 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 Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **Cancelled Insurance**

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

Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of £0.00 (Nil) 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 Buyer) 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 Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

#### **1 Insured**

1.1 The Supplier

#### **2 Interest**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 0) and arising out of or in connection with the provision of the Deliverables and in connection with this Contract.

### **3 Limit of indemnity**

- 3.1 Not less than £10,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £10,000,000 in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

### **4 Territorial limits United Kingdom 5 Period of insurance**

- 5.1 From the date of this Contract for the period of the Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

### **6 Cover features and extensions**

- 6.1 Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

### **7 Principal exclusions**

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

**8 Maximum deductible threshold**

- 8.1 Not to exceed £10,000,000 for each and every third party property damage claim (personal injury claims to be paid in full).

**PART B: UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

**PART C: ADDITIONAL INSURANCES**

Professional Indemnity Insurance	Where the Buyer requirement includes a potential breach of professional duty by the Supplier in connection with professional advice and /or professional services to be maintained for 6 years after the End Date
Property Damage Insurance / Goods in Transit Insurance	Where the Buyer requirement necessitates primary perils insurance for relevant physical property (e.g. Buyer physical property in the care, custody and control of the Supplier in delivering the Contract).
Cyber Liability Insurance	Where the Buyer requirement includes specific cyber risk exposures.
Environmental Liability Insurance or Contractors Pollution Liability Insurance	Where the Buyer requirement includes exposure to significant pollution / contamination risks.

## Schedule 26 (Sustainability)

### Definitions

["Modern Slavery  
Assessment Tool"]

means the modern slavery risk identification and management tool which can be found online at:  
<https://supplierregistration.cabinetoffice.gov.uk/msat>]

["Supply Chain Map" means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:

the name, registered office and company registration number of each entity in the supply chain; the function of each entity in the supply chain; and the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]

"Waste Hierarchy" means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:

Prevention;

Preparing for re-use;

Recycling;

Other Recovery; and

Disposal.

## **Part A**

### **Public Sector Equality Duty**

In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

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.

## **Employment Law**

The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

## **Modern Slavery**

The Supplier:

shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;

shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;

warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

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;

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;

shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;

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 the Contract;

shall prepare and deliver to the Buyer, 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 this Paragraph 0;

a statement under section 54 of the Modern Slavery Act would be sufficient for the required 'annual slavery and human trafficking report required by Paragraph 3.18

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;

shall not use or allow child or slave labour to be used by its Subcontractors; and

shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

## **Environmental Requirements**

The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.

In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:

prioritise waste management in accordance with the Waste Hierarchy as set out in Law;

be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and

ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.

In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.

In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

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>.

### **Supplier Code of Conduct**

In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

### **Reporting**

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 0-0 of this Part A above within fourteen (14) days of such request, provided that such requests are limited to [two] per requirement per Contract Year.

## **Part B**

### **Equality, Diversity and Inclusion – Further Requirements**

In delivering the Deliverables, the Supplier will comply with the Buyer's equality, diversity and inclusion requirements, to be provided to the Supplier by the Buyer.

The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities. **Environmental – Further Requirements**

The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Deliverables.

The Supplier shall ensure that any Deliverables are designed, sourced and delivered in a manner which is environmentally and socially responsible.

In delivering the Deliverables, the Supplier must comply with the Buyer's sustainability requirements, to be provided to the Supplier by the Buyer.

The Supplier warrants that it has obtained relevant Environment Management System (EMS) certified to ISO 14001 or an equivalent certification from a UKAS accredited body and shall comply with and maintain certification requirements throughout the Term.

In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer:

- avoid consumable single use items (including packaging) unless otherwise agreed with the Buyer, and unless the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Deliverables;

- demonstrate that the whole life cycle impacts (including end of use) associated with the Deliverables that extend beyond direct operations

- into that of the supply chain have been considered and reduced;

- minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using reuse and closed loop system];

- demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;

- enhance the natural environment and connecting communities with the environment;

achieve continuous improvement in environmental (and social) performance and

demonstrate to the Buyer that it has an environmental management system in place that is at least equivalent to the standards required to be certified to ISO 14001.

### **Modern Slavery– Further Requirements**

The Supplier shall comply with any request by the Buyer to complete the Modern Slavery Assessment Tool within sixty (60) days of such request.

The following shall be added to the definition of “Audit” in Schedule 1 immediately after limb (k):

“(l) carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Staff in a confidential manner and in the native language of such Supplier Staff in respect of workforce conditions, working or employment practices and recruitment practices;”

For the purposes of an audit carried out pursuant to limb (l) of the definition of “Audit”, in addition to any other rights under the Contract, the Buyer may instruct the Supplier to carry out such an audit of any Subcontractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Buyer within ninety (90) days of such instruction.

If the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, the Supplier shall comply with any request of the Buyer to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/830150/September\\_2019\\_Modern\\_Slavery\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf)

and such remedial action plan shall be deemed to be a Rectification Plan.

The Supplier shall comply with any request by the Buyer to provide a Supply Chain Map within fourteen (14) days of such request.

The Supplier shall comply with any request by the Buyer to provide a copy of any reports of any Subcontractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request.

The Supplier shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied.

The Supplier shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Buyer and relevant national or local law enforcement agencies.

**Further Reporting Requirements - TBC**

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 0 and 0 of this Part B above within thirty (30) days of such request, [provided that such requests are limited to twelve (12) per requirement per Contract Year].

The Supplier shall complete the reports in Table A of this Part B in relation to its provision of the Deliverables under this Contract and provide these to the Buyer on the date and frequency outlined in Table A of this Part B.

**Table A**

Sustainability Report Name	Content of Report	Frequency of Report
Sustainability - General	As proportionate and relevant to the Contract, the key sustainability impacts identified; the sustainability improvements planned or delivered; and the risks to the Deliverables of climate change, including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks].	On the anniversary of the Effective Date

## **Schedule 27 (Key Subcontractors)**

### **Restrictions on certain subcontractors**

The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award 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 the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 0. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. 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 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 Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;

the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and

(where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.

If requested by 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 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 Contract; a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;

a provision enabling 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 the Buyer;

obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of: the data protection requirements set out in Clause 18 (Data protection);

the FOIA and other access request requirements set out in Clause 20 (When you can share information);

the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute; the keeping of records in respect of the goods and/or services being provided under the Key SubContract, 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 the Buyer under Clauses 14.4 (When the Buyer can end this contract) and 14.5 (What happens if the contract ends) of this Contract;

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 the Buyer; and

a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step in on substantially the same terms as are set out in Clause 13 (Step-in rights).

The Supplier shall not terminate or materially amend the terms of any Key SubContract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

## **Schedule 29 (Key Supplier Staff)**

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 ("**Key Staff**").

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

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.

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

requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed); the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.

The Supplier shall:

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); ensure that any Key Role is not vacant for any longer than ten (10) Working Days; give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;

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 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.

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 – [REDACTED]

[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

## Schedule 30 (Exit Management)

### DEFINITIONS

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

<b>"Exclusive Assets"</b>	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
<b>"Exit Information"</b>	has the meaning given to it in Paragraph 0 of this Schedule;
<b>"Exit Manager"</b>	the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Net Book Value"</b>	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;

<b>"Replacement Goods"</b>	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 0 of this Schedule;
<b>"Transferable Assets"</b>	Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	has the meaning given to it in Paragraph 0 of this Schedule;
<b>"Transferring Contracts"</b>	has the meaning given to it in Paragraph 0 of this Schedule;

**“Virtual Library”**

the data repository hosted by the Supplier containing the accurate information about the Contract and the Deliverables in accordance with Paragraph 0 of this Schedule.

**SUPPLIER MUST ALWAYS BE PREPARED FOR CONTRACT EXIT**

The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

During the Contract Period, the Supplier shall within 30 days from the Start Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:

a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and a configuration database detailing the technical infrastructure, a schedule of the IPRs which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables,

and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.

Where Schedule 7 (Staff Transfer) applies to this Contract, the Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).

The Supplier shall:

ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of

the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### **ASSISTING RE-COMPETITION FOR DELIVERABLES**

The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").

The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.

The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).

The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier. **EXIT PLAN**

The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph **Error! Reference source not found.** of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").

The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 0, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

The Exit Plan shall set out, as a minimum:

how the Exit Information is obtained;

a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract; the management structure to be employed during the Termination Assistance Period; a detailed description of both the transfer and cessation processes, including a timetable; how the Deliverables will transfer to the Replacement Supplier and/or the Buyer; details of any contracts which

will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;

the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable); how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance; any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges; proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date; proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use; proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables; proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party; proposals for the disposal of any redundant Deliverables and materials;

how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and

any other information or assistance reasonably required by the Buyer or a Replacement Supplier.

Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (*Charges*). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.

The Supplier shall:

maintain and update the Exit Plan (and risk management plan) no less frequently than:

every six (6) months throughout the Contract Period;

no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;

as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice; as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and

jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 0 or 0 (as the context requires), shall that draft become the Exit Plan for this Contract.

A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## **TERMINATION ASSISTANCE**

The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify: the nature of the Termination Assistance required; and the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.

The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 0, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## **TERMINATION ASSISTANCE PERIOD**

Throughout the Termination Assistance Period the Supplier shall:

continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance; provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;

use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;

subject to Paragraph 0, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any

other reports nor to any other of the Supplier's obligations under this Contract; at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and seek the Buyer's prior written consent to access any Buyer Premises from which the deinstallation or removal of Supplier Assets is required.

If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 0 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.

If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

### **OBLIGATIONS WHEN THE CONTRACT IS TERMINATED**

The Supplier shall comply with all of its obligations contained in the Exit Plan.

Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

cease to use the Government Data; vacate any Buyer Premises; remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier; provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

such information relating to the Deliverables as remains in the possession or control of the Supplier; and such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.

Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

### **ASSETS, SUB-CONTRACTS AND SOFTWARE**

Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or

(subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:

which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**"); which, if any, of:

the Exclusive Assets that are not Transferable Assets; and the Non-Exclusive Assets, the Buyer and/or the Replacement Supplier requires the continued use of; and

which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

The Buyer shall:

accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 0 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 0 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

## **NO CHARGES**

Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule. **DIVIDING THE BILLS**

All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

the amounts shall be annualised and divided by 365 to reach a daily rate;

the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## **ANNEX 1: SCOPE OF TERMINATION ASSISTANCE**

1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:

1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;

1.1.3 providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;

1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;

1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;

1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;

1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;

1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;

1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;

1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;

1.1.11 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not

exceeding 6 Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:

a) to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;

1.1.12 knowledge transfer services, including:

- a) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
- b) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
- c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
- d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
- e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier will:

1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and

1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:

1.4.1 copies of up-to-date procedures and operations manuals;

1.4.2 product information;

1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and

1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

1.5.1 any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:

a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and

1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

## **Schedule 32 (Background Checks)**

### **1. WHEN YOU SHOULD USE THIS SCHEDULE**

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

### **2. DEFINITIONS**

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

### **3. RELEVANT CONVICTIONS**

- 3.1 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.
- 3.2 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):
  - 3.2.1 carry out a check with the records held by the Department for Education (DfE);
  - 3.2.2 conduct thorough questioning regarding any Relevant Convictions; and

3.2.3 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**

- Any offence involving mental or bodily injury to a child or young person
- Any offence involving the use of lewd, indecent or libidinous practice or behaviour towards a child or young person
- Any offence of assault or indecent assault on a child
- Any offence of false imprisonment
- Any offence of incest with a child
- Any offence of infanticide
- Any offence of kidnapping
- Any offence of manslaughter
- Any offence of murder
- Any offence of rape
- Any offence of receiving a stolen child
- Any offence of stealing a child or plagium

## **Appendix 1 - Safeguarding children and vulnerable adults**

### **Clause**

Regulated Activity (a) in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; and (b) in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

- 1.1 The Parties acknowledge that the Supplier is carrying out a Regulated Activity with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 1.2 The Supplier shall put in place safeguards to protect children and/or vulnerable adults from any risk of significant harm which could arise from the performance of this Contract. The Supplier shall agree these safeguards with the Buyer before commencing work on the Contract.
- 1.3 In addition, the Supplier shall carry out checks with the Disclosure and Barring Service (DBS checks) on all Supplier Personnel carrying out Regulated Activity. The Supplier must carry out a DBS check for each relevant member of Supplier Personnel]and shall renew the DBS check every three years for as long as this Contract is in force. The DBS check must be completed before any of the Supplier Personnel work with children and/or vulnerable adults, as applicable, in Regulated Activity.
- 1.4 The Supplier shall monitor the level and validity of the checks under this Clause for each member of the Supplier Personnel.
- 1.5 The Supplier shall immediately notify the Buyer of any information that it reasonably requests to enable it to be satisfied that the obligations of the Supplier under this Clause have been met.
- 1.6 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that such person would not be suitable to carry out, Regulated Activity or who may otherwise present a risk to children or vulnerable adults.
- 1.7 The Supplier shall refer information about any person carrying out the Deliverables to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not

otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.

1.8 The Supplier represents, warrants and undertakes that at all times for the purposes of this Contract it has no reason to believe that any member of the [Supplier Personnel is barred from performance of the Services in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

1.9 Both Parties will comply with all applicable requirements of Data Protection Legislation in relation to the requirements of this Clause. The Parties acknowledge that, for the purposes of the Data Protection Legislation, the Supplier is the

Controller in respect of DBS Checks carried out on Supplier Personnel. The Supplier will ensure that it has all necessary appropriate consents and notices in place to obtain the DBS Checks and to enable lawful disclosure of the DBS certificates and any other relevant Personal Data to the Supplier for the duration and purposes of this Contract.

## **Appendix 2 (The Natural History Museum Tender Response) – [REDACTED]**

## **Appendix 3 (The Buyers Environmental Policy)** **Commercial Policy Guidance – Environmental Policy in Procurement**

## Overview

The Department for Education recognises that the delivery of its operations inevitably impacts on the environment in a number of ways, for example, through the generation of waste and the use of energy for heating and lighting. Through the DfE's Sustainability and Climate Change Strategy, it aims to respond and adapt to the effects of climate change, thus ensuring that our business operation is undertaken in such a manner as to have a positive impact on the environment and achieve biodiversity net gain.

## DfE's Sustainability and Climate Change Strategy

The DfE published [a strategy](#) in April 2022, which sets out ambitious activity to respond to recommendations for education from the Committee for Climate Change, the Dasgupta Review, Green Jobs Taskforce report and supports the delivery of the Government's 25 Year Environment Plan and Net Zero Strategy.

## Greening Government Commitments

The [Greening Government Commitments](#) set out the actions UK government departments and their agencies undertook to reduce their impacts on the environment in the period 2016 to 2020 and their Commitments for the period 2021 to 2025.

Individual departments are required to publish their own sustainability reports either as part of their annual report, or as separate reports. The latest report for DfE can be found [here](#).

The DfE is committed to minimising the impact of its activities on the environment throughout all its procurement supply chains.

## The Social Value Act

In line with [The Social Value Act](#) using [The Social Value Model](#), Environmental Criteria may be included, where appropriate, in our tender document sets.

Any social value benefit proposed by tenderers must relate to additional improvements in the economic, social and/or environmental wellbeing of the relevant area to be delivered through the contract, and not replace the assessment and management of the environmental impacts of the core contract elements (direct and through the supply chain) and how they can be reduced, which must instead form a part of the core tender (i.e., not the social value element)

The social value 'Reporting Metrics' are based around the reduction of three of the target areas in the [Greening Government Commitments](#): greenhouse gases, waste

and water. In addition, there are Reporting Metrics relating to protecting and improving the environment and creating green spaces.

### **Sustainable procurement: the Government Buying Standards (GBS)**

The DfE will make sure that we meet the minimum mandatory Government Buying Standards (GBS) standards on [Sustainability](#) when buying goods and services. We encourage our suppliers to meet, where possible, the best practice standards, which go further than the mandatory standards.

### **Greening government: ICT and digital services strategy 2020 to 2025**

This strategy sets out how the government will work in partnership with industry and other sectors to provide ICT and digital services to help:

- achieve the United Nation's Sustainable Development Goals
- implement Defra's 25 Year Environment Plan
- meet the government's net zero commitments

The strategy is to be used by everyone involved and interested in government ICT and digital services, including suppliers and supply chains.

### **Taking account of Carbon Reduction Plans in the procurement of major government contracts**

In 2019, the UK became the first major economy to adopt a legal commitment to achieve 'Net Zero' carbon emissions by 2050. To support this, the Government Commercial Function has developed a new commercial policy measure for all central government departments and arm's length bodies.

This measure requires suppliers bidding for major government contracts to commit to achieving Net Zero by 2050 when procuring goods and/or services and/or works with an anticipated contract value above £5 million per annum (excluding VAT) by publishing a '[Carbon Reduction Plan](#)' and to provide their current GHG emissions. This is subject to the Public Contracts Regulations 2015 save where it would not be related and proportionate to the contract.

Suppliers will be deselected from the procurement if they fail to comply with the policy.

## **Further Information**

[Sustainability and Climate Change Strategy](#)

[Our energy use - Department for Education - GOV.UK \(www.gov.uk\)](#)

[Sustainable procurement | Crown Commercial Service](#)

[Carbon Net Zero - CCS \(crowncommercial.gov.uk\)](#)

[Microsoft Word - Glossary-of-terms -Carbon-Net-Zero-and-Smart-Solutions-.odt \(crowncommercial.gov.uk\)](#)

[Theme 8. Policy: Masterclass 6: The Drive for Net Zero—Carbon Reduction Planning in Commercial \(govcommercialcollege.co.uk\)](#)

[Greenhouse Gas Protocol | \(ghgprotocol.org\)](#)

[National Procurement Policy Statement.pdf \(publishing.service.gov.uk\)](#)