


# 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>	THE SECRETARY OF STATE FOR EDUCATION (the Buyer).  Its offices are on: Sanctuary Buildings, 20 Great Smith Street, London, SW1 3BT
2.	<b>Supplier</b>	Name: <b>IMPOWER Consulting Ltd</b> Address: 181 Queen Victoria St, London EC4V 4EG Registration number: 03876501
3.	<b>Contract</b>	This Contract between the Buyer and the Supplier is for the supply of Deliverables.
4.	<b>Contract reference</b>	6170
5.	<b>Deliverables</b>	The supplier will be responsible for the design and development of a bespoke ready-to-implement programme and framework, in close consultation with DfE, that will be used to support Local Authorities to effectively manage their SEND systems such that they function sustainably and deliver maximum value to the children with SEND in their care. See Schedule 2 (Specification) for further details.
6.	<b>Start Date</b>	4 <sup>th</sup> January 2022
7.	<b>End Date</b>	29 <sup>th</sup> April 2022
8.	<b>Extension Period</b>	N/A
9.	<b>Incorporated Terms</b>  (together these documents form the 'the Contract')	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: 1. This Award Form 2. Any Special Terms (see <b>Section 10 Special Terms</b> in this Award Form) 3. Core Terms (version 1.0) 4. Schedule 1 (Definitions) 5. Schedule 20 (Processing Data)

		<p>6. The following Schedules (in equal order of precedence):</p> <ul style="list-style-type: none"> <li>• Schedule 2 (Specification)</li> <li>• Schedule 3 (Charges)</li> <li>• Schedule 4, 4.1 and 4.2 (Tender) as long as any part of the Tender that offers a better commercial position for the Buyer takes precedence over all other contract documentation - &lt;REDACTED&gt;</li> <li>• Schedule 5 (Commercially Sensitive Information)</li> <li>• Schedule 21 (Variation Form)</li> <li>• Schedule 22 (Insurance Requirements)</li> <li>• Schedule 25 (Rectification Plan)Schedule 26 (Corporate Social Responsibility)</li> <li>• Schedule 36 (New IPR Review)</li> </ul>
10.	<b>Special Terms</b>	N/A
11.	<b>Buyer's Environmental Policy</b>	Available on request
12.	<b>Buyer's Security Policy</b>	Available on request
13.	<b>Social Value Commitment</b>	Not applicable
14.	<b>Commercially Sensitive Information</b>	Schedule 5
15.	<b>Charges</b>	Details in Schedule 3 (Charges)
16.	<b>Reimbursable expenses</b>	None. Expenses included in bottom up costing.
17.	<b>Payment method</b>	Invoices Raised Monthly in Arrears
18.	<b>Service Levels</b>	Not Applicable
19.	<b>Insurance</b>	Details in Annex of Schedule 22 (Insurance Requirements).

20.	<b>Liability</b>	[In accordance with Clause 11.1 of the Core Terms each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than £ <b>5 million</b>
21.	<b>Cyber Essentials Certification</b>	██████████
22.	<b>Progress Meetings and Progress Reports</b>	As per page 74 of the Tender
23.	<b>Guarantee</b>	Not applicable
24.	<b>Supplier Contract Manager</b>	██████████
25.	<b>Supplier Authorised Representative</b>	██████████
26.	<b>Supplier Compliance Officer</b>	██████████
27.	<b>Supplier Data Protection Officer</b>	██████████
28.	<b>Supplier Marketing Contact</b>	██████████
29.	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 1</b> National Children's Bureau 00952717 As per page 72 of the Tender</p> <p><b>Key subcontractor 2</b></p>

		<p>Peopletoo Limited 06969524 As per page 72 of the Tender</p> <p><b>Key Subcontractor 3</b> Unify Business Solutions Limited 04749638 As per page 72 of the Tender</p> <p><b>Key Subcontractor 4</b> Simpson Associates Information Services Limited 03442572 As per page 72 of the Tender</p> <p><b>Key Subcontractor 5</b> Isos Partnership (UK) LLP OC348723 As per page 72 of the Tender</p>
30.	<b>Buyer Authorised Representative</b>	

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

# Core Terms – Mid-tier

## **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:

- make changes to Award Form
- create new Schedules
- exclude optional template Schedules
- use Special Terms in the Award Form to add or change terms

2.2 The Contract:

- is between the Supplier and the Buyer
- 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 won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- verify the accuracy of the Due Diligence Information
- properly perform its own adequate checks

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

2.6 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:

- that comply with the Specification, the Tender Response and the Contract
- using Good Industry Practice
- using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract
- on the dates agreed
- that comply with Law

3.1.2 In the event that a level of warranty is not specified in the Award Form, the Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

## **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 takes all reasonable steps 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:

- exclude VAT, which is payable on provision of a valid VAT invoice
- 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:

- includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer
- 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 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 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 either:

- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or
- enter into a direct agreement with the Subcontractor or third party for the relevant item

4.8 If the Buyer uses Clause 4.7 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

4.9 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- the relevant item being made available to the Supplier if required to provide the Deliverables
- any reduction in the Charges excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges

4.10 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:

- the Buyer cannot terminate the Contract under Clause 10.4.1
- the Supplier is entitled to reasonable and proven additional expenses and

- to relief from Delay Payments, liability and Deduction under this Contract
- the Supplier is entitled to additional time needed to make the Delivery
- the Supplier cannot suspend the ongoing supply of Deliverables

5.2 Clause 5.1 only applies if the Supplier:

- gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware
- demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause
- 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 for 7 years after the End Date and in accordance with the GDPR.

6.3 The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.

6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.

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

- tell the Buyer and give reasons
- propose corrective action
- provide a deadline for completing the corrective action

## **7. Supplier staff**

7.1 The Supplier Staff involved in the performance of the Contract must:

- be appropriately trained and qualified
- be vetted using Good Industry Practice and the Security Policy
- 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 Clause 27.

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. Rights and protection**

8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform the Contract
- the Contract is executed by its authorised representative
- it is a legally valid and existing organisation incorporated in the place it was formed
- 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
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract
- it is not impacted by an Insolvency Event

8.2 The warranties and representations in Clauses 2.6 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies the Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
- non-payment by the Supplier of any tax or National Insurance

8.4 All claims indemnified under this Contract must use Clause 26.

8.5 The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.

8.6 If the Supplier becomes aware of a representation or warranty that becomes

untrue or misleading, it must immediately notify the Buyer.

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

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

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier

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

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

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 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.

9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- obtain for the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
- replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables

## **10. Ending the contract**

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

10.2 The Buyer can extend the Contract for the Extension Period by giving the

Supplier no less than 4 weeks written notice before the Contract expires.

### **10.3 Ending the contract without a reason**

10.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier at least 90 days' notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.

### **10.4 When the Buyer can end the Contract**

10.4.1 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:

- there's a Supplier Insolvency Event
- there's a Default that is not corrected in line with an accepted Rectification Plan
- the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- there's any material Default of the Contract
- there's any material Default of any Joint Controller Agreement relating to the Contract
- there's a Default of Clauses 2.6, 9, 14, 15, 27, 32 or Schedule 19 (Cyber Essentials) (where applicable) relating to the Contract
- there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels)
- there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing
- there's a Variation to the Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- 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
- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them

10.4.2 If there is a Default, the Buyer can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.4.3 When the Buyer receives a requested Rectification Plan it can either:

- reject the Rectification Plan or revised Rectification Plan, giving reasons
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties

10.4.4 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:

- must give reasonable grounds for its decision
- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.5 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.7 applies.

## **10.5 What happens if the contract ends**

Where the Buyer terminates the Contract under Clause 10.4.1 all of the following apply:

10.5.1 The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.

10.5.2 The Buyer's payment obligations under the terminated Contract stop immediately.

10.5.3 Accumulated rights of the Parties are not affected.

10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

10.5.5 The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.

10.5.6 The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.5.7 The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## **10.6 When the supplier can end the contract**

10.6.1 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.

#### 10.6.2 If a Supplier terminates the Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier
- 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
- Clauses 10.5.4 to 10.5.7 apply

### 10.7 When subcontracts can be ended

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

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4
- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer

### 10.8 Partially ending and suspending the contract

10.8.1 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.

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

10.8.3 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

- reject the Variation
- increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.



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

11.1 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 in the Award Form.

11.2 No Party is liable to the other for:

- any indirect Losses
- Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect)

11.3 In spite of Clause 11.1, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law

11.4 In spite of Clause 11.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.8 or Schedule 7 (Staff Transfer) of the Contract.

11.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.

11.6 When calculating the Supplier's liability under Clause 11.1 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.4

11.7 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.

## **12. Obeying the law**

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Schedule 26 (Corporate Social Responsibility).

12.2 The Supplier indemnifies the Buyer against any costs resulting from any Default

by the Supplier relating to any applicable Law.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

### **13. Insurance**

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

### **14. Data protection**

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).

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

14.3 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.

14.4 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.

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

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

- 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
- restore the Government Data itself or using a third party

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless the Buyer is at fault.

14.8 The Supplier:

- must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request
- must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
- must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
- 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
- indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

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

### **15.1 Each Party must:**

- keep all Confidential Information it receives confidential and secure
- 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
- immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

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

- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure
- if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party
- if the information was given to it by a third party without obligation of confidentiality
- if the information was in the public domain at the time of the disclosure
- if the information was independently developed without access to the Disclosing Party's Confidential Information
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers on a need-to-know basis
- to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations

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

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

- on a confidential basis to the employees, agents, consultants and contractors of the Buyer
- 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
- if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
- where requested by Parliament
- under Clauses 4.7 and 16

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information and any Information which is exempt from disclosure by Clause 16 is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

## **16. When you can share information**

16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:

- publish the Transparency Information
- comply with any Freedom of Information Act (FOIA) request
- comply with any Environmental Information Regulations (EIR) request

16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

## **17. Invalid parts of the contract**

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

## **18. No other terms apply**

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

## **19. Other people's rights in 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.

## **20. Circumstances beyond your control**

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

- provides a Force Majeure Notice to the other Party
- uses all reasonable measures practical to reduce the impact of the Force Majeure Event

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

20.3 Where a Party terminates under Clause 20.2:

- each party must cover its own Losses
- Clause 10.5.2 to 10.5.7 applies

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

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

## **22. Giving up contract rights**

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

## **23. Transferring responsibilities**

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

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

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

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

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

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

- their name
- the scope of their appointment
- the duration of their appointment

## **24. Changing the contract**

24.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing and signed by both Parties

24.2 The Supplier must provide an Impact Assessment either:

- with the Variation Form, where the Supplier requests the Variation
- within the time limits included in a Variation Form requested by the Buyer

24.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:

- agree that the Contract continues without the Variation
- terminate the affected Contract, unless the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them

- refer the Dispute to be resolved using Clause 34 (Resolving Disputes)

24.4 The Buyer is not required to accept a Variation request made by the Supplier.

24.5 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.

24.6 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:

- that the Supplier has kept costs as low as possible, including in Subcontractor costs
- of how it has affected the Supplier's costs

24.7 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

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

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

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

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

## **26. Dealing with claims**

26.1 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.

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

- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
- give the Indemnifier reasonable assistance with the claim if requested

26.3 The Beneficiary must not make admissions about the Claim without the prior

written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 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.

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

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

26.7 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:

- the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
- the amount the Indemnifier paid the Beneficiary for the Claim

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

27.1 The Supplier must not during any Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(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

27.2 The Supplier must during the Contract Period:

- 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
- keep full records to show it has complied with its obligations under Clause 27 and give copies to the Buyer on request
- 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 Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

27.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:



- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
- received a request or demand for any undue financial or other advantage of any kind related to the Contract
- suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies the Buyer as required by Clause 27.3, 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.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take

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

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which the Buyer reasonably imposes related to equality Law

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

## **29. Health and safety**

29.1 The Supplier must perform its obligations meeting the requirements of:

- all applicable Law regarding health and safety
- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier

29.2 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.

### **30. Environment**

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

### **31. Tax**

31.1 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.

31.2 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:

- the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant
- other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need

31.3 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:

- 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
- 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

31.4 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:

- the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
- 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
- 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 31.3 or confirms that the Worker is not complying with those requirements
- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management

## **32. Conflict of interest**

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

32.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest happens or is expected to happen.

32.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

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

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

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

## **34. Resolving disputes**

34.1 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.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Buyer refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the Dispute
- grant interim remedies
- grant any other provisional or protective relief

34.4 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.

34.5 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 34.3, 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 34.4.

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

### **35. Which law applies**

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

## **Schedule 1 (Definitions)**

- 1.1 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.

- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
- 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;
  - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.3.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
  - 1.3.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
  - 1.3.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
  - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
  - 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
  - 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.

1.4 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>"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>"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>"Audit"</b>	<p>the Buyer's right to:</p> <ul style="list-style-type: none"> <li>a) 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>b) 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>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Schedule 26 (Corporate Social Responsibility), 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>f) 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> <li>g) 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>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with</li> </ul>

	<p>the Contract;</p> <p>i) 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;</p> <p>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources.</p>
<b>"Auditor"</b>	<p>a) the Buyer's internal and external auditors;</p> <p>b) the Buyer's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
<b>"Buyer Cause"</b>	<p>any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;</p>
<b>"BACS"</b>	<p>the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;</p>
<b>"Beneficiary"</b>	<p>a Party having (or claiming to have) the benefit of an indemnity under this Contract;</p>
<b>"Buyer Assets"</b>	<p>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;</p>
<b>"Buyer Authorised Representative"</b>	<p>the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;</p>
<b>"Buyer Premises"</b>	<p>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);</p>
<b>"Contract"</b>	<p>the contract between the Buyer and the Supplier, which consists of</p>

	the terms set out and referred to in the Award Form;
<b>"Contract Period"</b>	the Contract Period in respect of the Contract;
<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:  a) Government Department;  b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  c) Non-Ministerial Department; or  d) Executive Agency;
<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 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 to be entered into between the Buyer and the Supplier for the provision of the Deliverables;
<b>"Contracts Finder"</b>	the Government's publishing portal for public sector procurement opportunities and contract data;
<b>"Contract Period"</b>	the term of the Contract from the earlier of the: a) applicable Start Date; or b) the Effective Date until the applicable 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 GDPR;
<b>"Core Terms"</b>	the Buyer's standard terms and conditions for common goods and services which comprise one part of the Contract the full title of which is Core Terms – Mid-tier version 1.0;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables: a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per <a href="#">WorkMan</a> Day, of engaging the Supplier Staff, including: i) base salary paid to the Supplier Staff; ii) employer's National Insurance contributions; iii) pension contributions; iv) car allowances; v) any other contractual employment benefits; vi) staff training; vii) work place accommodation; viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included

	<p>within limb (b) below); and</p> <p>ix) reasonable recruitment costs, as agreed with the Buyer;</p> <p>b) 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;</p> <p>c) 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>d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <p>a) Overhead;</p> <p>b) financing or similar costs;</p> <p>c) 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;</p> <p>d) taxation;</p> <p>e) fines and penalties;</p> <p>f) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and</p> <p>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<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, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<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"</b>	(i) the GDPR, the LED and any applicable national implementing

<b>"Legislation"</b>	Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;
<b>"Data Protection Officer"</b>	has the meaning given to it in the GDPR;
<b>"Data Subject"</b>	has the meaning given to it in the GDPR
<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>"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 15 (What you must keep confidential);

<b>"Dispute"</b>	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (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>a) 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</p> <p>b) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>c) 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>"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 or any other Regulations implementing the European Council Directive 77/187/EEC;
<b>"End Date"</b>	<p>the earlier of:</p> <p>a) the Expiry Date (as extended by any Extension Period exercised</p>

	<p>by the Buyer under Clause 10.2); or</p> <p>b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</p>
<b>"Environmental Policy"</b>	<p>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;</p>
<b>"Estimated Year 1 Charges"</b>	<p>the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;</p>
<b>"Estimated Yearly Charges"</b>	<p>means for the purposes of calculating each Party's annual liability under clause 11.2 :</p> <p>i) in the first Contract Year, the Estimated Year 1 Charges; or</p> <p>ii) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or</p> <p>iii) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;</p>
<b>"Equality and Human Rights Commission"</b>	<p>the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;</p>
<b>"Existing IPR"</b>	<p>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);</p>
<b>"Expiry Date"</b>	<p>the date of the end of the Contract as stated in the Award Form;</p>
<b>"Extension Period"</b>	<p>such period or periods beyond which the Initial Period may be extended up to a maximum of the number of years in total specified in the Award Form;</p>
<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> <p>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;</p> <ul style="list-style-type: none"> <li>a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>b) acts of a Crown Body, local government or regulatory bodies;</li> <li>c) fire, flood or any disaster; or</li> <li>d) 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>i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</li> <li>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>iii) any failure of delay caused by a lack of funds;</li> </ul> </li> </ul>
<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>"Award Form"</b>	<p>the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by 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>" Special Terms"</b>	<p>any additional terms and conditions specified in the Award Form incorporated into the Contract;</p>
<b>" Tender Response"</b>	<p>the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);</p>
<b>"GDPR"</b>	<p>the General Data Protection Regulation (Regulation (EU) 2016/679)</p>
<b>"General Anti-Abuse Rule"</b>	<ul style="list-style-type: none"> <li>a) the legislation in Part 5 of the Finance Act 2013 and; and</li> <li>b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</li> </ul>

<b>"General Change in Law"</b>	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;
<b>"Goods"</b>	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
<b>"Good Industry Practice"</b>	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;
<b>"Government"</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 other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<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: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Buyer; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract;</li> </ul>
<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/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-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"</b>	an assessment of the impact of a Variation request by the Buyer

<b>"Assessment"</b>	<p>completed in good faith, including:</p> <ul style="list-style-type: none"> <li>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</li> <li>b) details of the cost of implementing the proposed Variation;</li> <li>c) 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;</li> <li>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</li> </ul>
<b>"Implementation Plan"</b>	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;
<b>"Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>"Independent Control"</b>	where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and <b>"Independent Controller"</b> shall be construed accordingly;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with the Award Form;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<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>	<ul style="list-style-type: none"> <li>a) in respect of a person:</li> <li>b) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>c) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for</li> </ul>



	<p>the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>d) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</p> <p>e) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>f) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>g) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>h) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>i) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>j) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<b>"Installation Works"</b>	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;
<b>"Intellectual Property Rights" or "IPR"</b>	<p>a) 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;</p> <p>b) 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</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>"Invoicing Address"</b>	the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;
<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;
"IR35"	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> ;
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 ( <i>Processing Data</i> );
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of Processing;
"Key Personnel"	the individuals (if any) identified as such in the Award Form;
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	any Subcontractor: a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or b) 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 c) 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, and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Losses"	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>Lots</b> "	the number of lots specified in Schedule 2 (Specification), if applicable;
" <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 National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
" <b>New IPR</b> "	<p>a) 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 (but not limited to) database schema; and/or</p> <p>b) 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;</p> <p>but shall not include the Supplier's Existing IPR;</p>
" <b>Occasion of Tax Non – Compliance</b> "	<p>where:</p> <p>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>i) 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;</li> <li>ii) 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</li> </ul> <p>b) 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</p>

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

<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>"Parliament"</b>	takes its natural meaning as interpreted within 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 GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the GDPR;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Meeting Frequency"</b>	the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Award Form;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Progress Report Frequency"</b>	the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Award Form;
<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> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <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</p>

	<p>c) committing any offence:</p> <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or</li> </ul> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
<b>“Protective Measures”</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> <li>a) the nature of the data to be protected</li> <li>b) harm that might result from Data Loss Event;</li> <li>c) state of technological development</li> <li>d) the cost of implementing any measures</li> </ul> <p>including but not limited to 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>“Recall”</b>	<p>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;</p>
<b>"Recipient Party"</b>	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify it's breach using the template in Schedule 25 (Rectification Plan Template) which shall include:</p> <ul style="list-style-type: none"> <li>a) full details of the Default that has occurred, including a root cause analysis;</li> <li>b) the actual or anticipated effect of the Default; and</li> <li>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</li> </ul>
<b>"Rectification"</b>	<p>the process set out in Clause 10.4.2 to 10.4.4 (Rectification Plan</p>

<b>"Plan Process"</b>	Process);
<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>a) 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</p> <p>b) 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>"the Buyer's Confidential Information"</b>	<p>c) 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);</p> <p>d) 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</p> <p>information derived from any of the above;</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 10.6 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 Subcontractor"</b>	a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
<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 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 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>"Service Transfer"</b>	any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer;



<b>"Sites"</b>	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; c) 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>"Special Terms"</b>	any additional Clauses set out in the Award Form which shall form part of the respective 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>	any: a) 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; b) standards detailed in the specification in Schedule 2 (Specification); c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time; d) relevant Government codes of practice and guidance applicable from time to time;
<b>"Start Date"</b>	the date specified on the Award Form;
<b>"Storage Media"</b>	the part of any device that is capable of storing and retrieving data;

<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than a Contract, pursuant to which a third party:  a) provides the Deliverables (or any part of them);  b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or  c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<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's Confidential Information"</b>	a) 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;  b) 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;  c) 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>"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 Non-Performance"</b>	where the Supplier has failed to:  a) Achieve a Milestone by its Milestone Date;  b) provide the Goods and/or Services in accordance with the

	Service Levels ; and/or c) comply with an obligation under the Contract;
<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>"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>"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>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;

<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 –  (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and  (ii) 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>"Variation"</b>	has the meaning given to it in Clause 24 (Changing 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 24 (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>"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.
<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;

## Schedule 2 (Specification)

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

### **DELIVERING BETTER VALUE IN SEND : INVITATION TO TENDER (ITT) SPECIFICATION OF REQUIREMENTS**

#### **1. INTRODUCTION**

- 1.1. The purpose of this specification is to provide a description of the services that the supplier shall be required to deliver through a single contract to be awarded by the Department for Education (DfE) to design and develop the Delivering Better Value in SEND programme and framework.
- 1.2. Our vision for children and young people with Special Educational Needs and Disabilities (SEND) is the same as for all children and young people – that they achieve well in their early years, at school and beyond; they find employment where that's appropriate; and lead happy, healthy and fulfilled lives which they have choices and control over the support provided to them.
- 1.3. Supporting local areas, delivery partners and providers to meet the needs of children and young people with SEND continues to be a high priority for government, with a clear line of sight to key government commitments on the levelling up agenda, economic growth and employment, and the recently published national disability strategy.
- 1.4. Despite the ambitious reforms introduced under the 2014 Children and Families Act, key challenges remain in delivering SEND services in line with our vision. These reforms have not translated into improved outcomes for all children and young people and increased demand for SEND services is putting local authority SEND budgets under growing, unsustainable pressure, exacerbated by widespread variation in the quality and timeliness of service provision to children, young people and their families.
- 1.5. There is a strong body of evidence to support the need for continued intervention in order to address increasing demand and budgetary pressures on services, and occurrences of poor outcomes for children and young people with SEND. More needs to be done to help local authorities manage their SEND systems effectively so they can sustainably deliver better outcomes for children and young people with SEND within their means.
- 1.6. The SEND Review was announced in September 2019. It is a fundamental and cross-government review looking at how to improve the SEND system so that provides more consistent, high quality, and integrated SEND services across education, health and care. It is also considering measures to make sure that money is being spent fairly, efficiently and effectively, and that the support available to children and young people is sustainable in the future. We are working with children, young people, their families and experts across education,

health and care to deliver our common goal of improving the SEND system. We will publish the review as soon as it is practicable to do so.

- 1.7. As the SEND review outcome is not yet known, we need to lay the foundations upon which these reforms can be built, ensuring that, through our Delivering Better Value in SEND programme, we are able to build the capacity and capability in the system to begin to address existing challenges and pressures in anticipation of wider reforms.
- 1.8. We understand that it may not be possible for one contractor to provide all of the requirements in this specification, and we welcome bids from consortia as well as from individual organisations.
- 1.9. The contract is due to commence December 2021 and expire March 2022 (a 4 month term).
- 1.10. We encourage bidders to offer work experience, placements, or other supported employment opportunities, such as Supported Internships, to children and young people with SEND.

## 2. PROGRAMME REQUIREMENTS

- 2.1. The supplier will be responsible for the design and development of a bespoke ready-to-implement programme and framework, in close consultation with DfE, that will be used to support Local Authorities to effectively manage their SEND systems such that they function sustainably and deliver maximum value to the children with SEND in their care. DfE does not intend to strictly specify how this should be delivered, and wishes to encourage bidder innovation in designing and developing the programme. However, a successful bidder would need to show how they would deliver the following elements:

Table 1: List of functions

Function	Description
<b>A: Design and develop a Delivering Better Value in SEND programme that defines and sets out a value-based approach to managing a local area's SEND system effectively, integrating effective financial management and policy practice to enable financial sustainability, and improved outcomes through a single framework.</b>	<p>DfE does not intend to mandate components, and wishes to encourage bidder innovation. However, the supplier will be required to design and develop a Delivering Better Value Programme; developing the framework, structure and components to outline and embed a value-based approach to effective SEND system management, integrating effective financial management and policy practice to enable financial sustainability and improved outcomes through a single framework.</p> <p>Under this programme, DfE intends to deploy independent SEND system financial advisers (SSFAs) who, working with SEND system practice advisers (SSPAs), will provide change support to local authorities; helping them review their SEND systems, identify underlying drivers of poor outcomes and high spend, and develop change strategies that will secure financial stability and improved outcomes for children and young people with SEND.</p> <p>The framework should identify, define and set out the standard of optimal and measurable outcomes for children and young people with SEND that should be delivered through the effective management of a local area's SEND system; setting out 'what good looks like' and pathways to achieving it.</p> <p>This should link the effectiveness of a local area SEND system not only to efficient spend but to tangible outcomes achieved with the spend i.e., its ability to generate value per pound spent.</p>

	<p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ol style="list-style-type: none"> <li>1. Design and develop an overarching <u>Delivering Better Value Framework</u> that sets out what an effective, value-based and sustainable local area SEND system should look like. This would include, but not limited to, identifying and developing key components or enablers of effective SEND system management that is replicable, holistic and balanced, focused on delivering value i.e. achieving good outcomes for children and financial sustainability.</li> <li>2. Identify and define the standard of optimal and measurable outcomes for children and young people with SEND that such a system should deliver, and develop indicators for these identified outcomes.</li> <li>3. Undertake a detailed analysis of Ofsted/CQC published inspection reports to ensure the defined standard of outcomes and framework align with their inspection framework.</li> <li>4. Design and develop a <u>Delivering Better Value Index</u> that compiles, integrates and utilises an extensive range of publicly available local authority datasets on outcomes and spend to measure local authorities' performance against outcomes per pound spent i.e., the extent to which they're able to generate value. This would involve developing a Value metric using a methodology that devises a range of outcome indicators for children with SEND within a local authority, and sets that against the authority's spend to identify a Value score for each local authority. This would be a comprehensive 4-tiered database developed in close consultation with DfE.</li> <li>5. Design and develop an interactive <u>Delivering Better Value diagnostic tool</u> that can be utilised to interrogate a local authority's quantitative and qualitative data, in order to identify the root causes of poor performance in delivering good outcomes and/or underlying drivers of cost in its high needs</li> </ol>
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	<p>budget.</p> <ol style="list-style-type: none"> <li>6. Design and develop a range of <u>Delivering Better Value report templates</u> that can be utilised to capture comprehensive snapshots of a local authority's value position and performance including but not limited to; diagnostics of its high needs system, key trajectories, value-gap and change strategy.</li> <li>7. Design and develop a dual-level <u>Delivering Better Value e-learning resource package</u> (higher and introductory level) that comprehensively sets out the value-based approach to effective high needs management and how to effectively use this approach to provide change support to local authorities.</li> <li>8. Design and develop, in conjunction with DfE, a comprehensive communications strategy and sector-engagement plan for the Delivering Better Value in SEND programme.</li> <li>9. Liaise with key stakeholders, including local authorities, Ofsted/CQC, NHS England, CCGs/Integrated Care Systems (ICSs), parent carer representatives and education settings in the design and development of the framework to ensure objectives are aligned and needs of the sector incorporated.</li> <li>10. Develop and refine the framework and components, ensuring they respond to sector needs and achieve DfE's objectives for the programme, taking into account feedback from engagement with stakeholders and DfE's developing policy priorities.</li> <li>11. Ensure there is coherence and consistency across all the elements of this programme so they function as a seamless whole.</li> <li>12. Develop and agree with DfE a high-level delivery plan covering the duration of the contract term, taking into account the programme specification, aims and DfE priorities outlined in this ITT.</li> </ol>
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<p><b>B: Governance – a robust approach to programme management, security of data and quality assurance of the programme</b></p>	<p>The supplier will be required to collect management information on the programme to support its own continuous improvement. It will also be required to collect and supply information for other relevant organisations, including DfE, the National Audit Office and any appointed evaluation contractor.</p> <p>The supplier will ensure that the collection, transfer and storage of this information complies with relevant statutory requirements, including the General Data Protection Regulation (GDPR). You will submit a security plan that explains how you will ensure that any DfE and personal data will be protected.</p> <p>The supplier will be required to contribute to, and participate in, regular reporting of management information as outlined in this ITT pack, including, but not limited to, recruitment and performance data, marketing activity and financial spend.</p> <p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ol style="list-style-type: none"> <li>1. Have a clear leadership and governance structure in place that combines efficient decision making with accountability and transparency.</li> <li>2. Ensure there are sufficient staff with the right skills and expertise to manage the efficient and effective development of the programme.</li> <li>3. Develop, implement and progressively refine robust yet responsive programme management arrangements to ensure timely and effective delivery: <ol style="list-style-type: none"> <li>a. Against the objectives and aims set out in this ITT;</li> <li>b. Against the proposal submitted by the supplier in response to this ITT;</li> <li>c. Against the implementation plans produced and developed by the supplier; and</li> <li>d. Of all services, deliverables and outputs contained or otherwise implicit within the contract concluded between the supplier and DfE, including any subsequent amendments or variations.</li> </ol> </li> </ol>
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	<p>4. Handle all data in accordance with government best practice, and in particular:</p> <ul style="list-style-type: none"> <li>a. Provide a security plan that explains departmental or personal data will be protected;</li> <li>b. Ensure any data or management information transferred to DfE or employers is done so in an agreed government secure method;</li> <li>c. Make available to DfE any item of data in the supplier's possession within 24 hours of written request;</li> <li>d. Provide to DfE all reasonable support and assistance in responding to any ad-hoc or urgent data requests to which Officials are required to respond as a consequence of legislative requirements or constitutional convention, including (but not limited to) requests under the Freedom of Information Act 2000 or the Data Protection Act 2018, requests from Ministers, and questions submitted by Members of Parliament; such support and assistance to be provided in a flexible and timely manner within the agreed timescales and at no additional cost to DfE; and</li> <li>e. Take appropriate action to ensure that at all times the collection and transfer of information complies with the Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), including the inclusion of specific statements (on which DfE will advise) in a privacy notice to be issued to participants, and ensuring the secure storage and transfer of data.</li> </ul> <p>5. In the event that the services provided include digital delivery, register with and at all times remain compliant with the Cyber Essentials Scheme, including the requirements for basic technical protection from cyberattacks.</p> <p>The supplier should also set out in detail:</p> <p>6. The proposed management and governance structure for delivery of the Delivering Better Value in SEND</p>
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	<p>contract including the responsibilities and experience of different organisations/consortium members, how they will work together, and who will lead the consortium (if applicable).</p> <ol style="list-style-type: none"> <li>7. An effective approach to managing potential conflicts of interest.</li> <li>8. Confidentiality agreements that will be in place with consortium members and sub-contractors (if applicable).</li> <li>9. How deliverables will be quality assured.</li> <li>10. How the Technical Requirements set out in Annex B and sections 6.6 - 6.9 of Document 1 - ITT Process Overview are reviewed and adhered to.</li> </ol>
<b>C: Risk management, reporting and delivery against key performance indicators (KPIs)</b>	<p>The supplier will be required to comply with all elements of this specification, its delivery proposal for the programme in the form agreed by DfE, the terms and conditions of the contract, and the agreed KPIs for the programme.</p> <p>It will be required to continually monitor and regularly report on progress against these; on risks and issues affecting the successful delivery of programme objectives; on progress against the agreed implementation plan, high-level delivery plan and detailed delivery plans; and on programme finances.</p> <p>It will be required to attend service monitoring meetings as agreed with DfE. The supplier will be required to work with DfE to meet contract management objectives.</p>
	<p><b>Detailed requirements:</b></p> <p>The supplier will:</p> <ol style="list-style-type: none"> <li>1. Ensure that day-to-day operational management of the programme, both at design and delivery stages, are of an excellent quality and are conducted professionally against agreed ways of working and standards of behaviour by building a collaborative working relationship between the Supplier and DfE.</li> <li>2. Have robust management controls and management information to provide a comprehensive view of actual progress of delivery against an agreed plan with supporting evidence as necessary.</li> </ol>

	<ol style="list-style-type: none"> <li>3. Ensure potential problems are identified as early as possible so that corrective actions can be taken to keep delivery on track.</li> <li>4. Obtain DfE approval for a plan of comprehensive corrective actions, mitigations and specific timescales in the event of any slippage in order to restore progress back to plan.</li> <li>5. Put in place clear internal governance arrangements that allow for rapid and effective decision making and the escalation of issues requiring resolution, and provide DfE with a copy of the same (and any revisions).</li> <li>6. Propose KPIs which meet the requirements outlined in section 3, function A of this document.</li> <li>7. Commit to meeting any and all KPIs as agreed with DfE.</li> </ol> <p>The supplier should also set out in detail:</p> <ol style="list-style-type: none"> <li>8. Project management and reporting arrangements and how they relate to effective governance of the work by DfE.</li> <li>9. An outline plan to show how key project milestones will be met.</li> <li>10. A project plan outlining critical activities to be undertaken to achieve each milestone, the resource required to do so and, if they work as a consortium, which members of it (and stakeholders where appropriate) will lead to achieve it.</li> <li>11. How they will effectively resource this contract, outlining proposed staffing and management structure.</li> <li>12. A risk register – defining specific risks or issues in delivering the proposal, and describing mitigations and contingencies:             <ol style="list-style-type: none"> <li>a. How they will ensure potential problems are identified and escalated as early as possible so that corrective actions can be taken to keep</li> </ol> </li> </ol>
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	<p>delivery on track.</p> <p>b. A plan of comprehensive corrective actions, mitigations and specific timescales in the event of any slippage against plan in order to restore progress back to plan;</p> <p>13. How DfE will be provided with management and performance information.</p> <p>14. How they will provide a comprehensive view of actual progress of delivery against the plan with supporting evidence as necessary, including setting out appropriate attendance of any subcontractors at review meetings, board meetings and other reporting/update meetings.</p>
<b>D: End of contract</b>	<p>The supplier will be required to ensure that there is a formal closure procedure and have an exit strategy in place for handover of the system, if required.</p>
	<p><b>Detailed requirements:</b></p> <p>The supplier will show:</p> <ol style="list-style-type: none"> <li>1. A clear plan for formal project closure including any Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangement where required. TUPE information for this tender is available upon request, please contact the commercial team through Jaggaer to request.</li> <li>2. A clear exit strategy for handover, if required, of all aspects of the service to DfE.</li> <li>3. The methodology for presenting all material from the contract into a final report for DfE.</li> <li>4. A clear summary of outputs, lessons learned and outstanding issues arising during the contract.</li> </ol>

### 3. FINANCE, VALUE FOR MONEY AND COMPLIANCE

- 3.1. The approximate budget is up to **£1.5 million** (inc VAT) in the contract period, which shall run from **December 2021** to **March 2022**. This represents the maximum contract value.
- 3.2. Bidders are welcome to specify a lower funding requirement and this will be taken into account when assessing the overall value represented by their respective bids. An exact breakdown of costs and a payment schedule will be agreed with the successful supplier.
- 3.3. The supplier shall be entitled to invoice DfE in arrears according to profile.
- 3.4. All payments are to be triggered by DfE's acceptance of milestone deliverables. An invoice for each milestone deliverable, which may comprise various goods and services, may be submitted after DfE has communicated its acceptance of that milestone deliverable to the contractor.
- 3.5. Invoices should be submitted by email to the DfE accounts payable team and copied to the relevant contract manager and payment manager. The DfE contract manager will approve the invoice without unreasonable delay and it should be paid within 30 days of the end of the relevant invoicing date. Payments will be made by BACS transfer following receipt of a valid invoice. The successful supplier should provide details of any discounts for prompt payment.
- 3.6. VAT will be charged where applicable on elements within the agreed contract. Where the contract price agreed between DfE and the contractor is inclusive of any VAT, further amounts will not be paid by DfE should a vatable supply claim be made at any later stage.
- 3.7. The supplier must investigate VAT issues with HMRC, identify which services are exempt and which would be classified to attract VAT at the prevailing rate. The supplier shall add VAT to the price at the prevailing rate as applicable.
- 3.8. Bidders should be aware that as part of the government's commitment to efficiency controls, there are restrictions on a number of categories of expenditure, including (but not limited to):
  - 3.8.1. advertising, marketing and communications (including but not limited to printing, publications, events and public relations); and
  - 3.8.2. digital and technology.
- 3.9. Full details of Cabinet Office spending controls and the categories of expenditure within scope can be found at:  
[gov.uk/government/collections/cabinet-office-controls#cabinet-office-spend-controls-summary](https://gov.uk/government/collections/cabinet-office-controls#cabinet-office-spend-controls-summary). Bidders should ensure that any expenditure covered by the controls is clearly identifiable in the cost matrix. The successful bidder will be required to work with DfE to secure appropriate clearances for all activities within scope of the controls, regardless of value.

## Schedule 3 (Charges)

### 1. How Charges are calculated

- a. The Charges:
  - i) shall be calculated in accordance with the terms of this Schedule;
  - ii) cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form

## **2. The pricing mechanisms**

- a. The pricing mechanisms and prices set out in Annex 1 shall be available for use in calculation of Charges in the Contract.

## **3. Are costs and expenses included in the Charges**

- a. the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:
  - i) incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or
  - ii) costs incurred prior to the commencement of the Contract.

## **Annex 1: Rates and Prices**

Please see separate Annex 1 – Pricing <REDACTED>

## **Schedule 5 (Commercially Sensitive Information)**

### **2. What is the Commercially Sensitive Information?**

- 2.1 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.
- 2.2 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).
- 2.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 16 (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	Item(s)	Duration of Confidentiality
1	17 <sup>th</sup> November 2021	Technical response and appendices	3 years

## Schedule 6 (Transparency Reports)

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 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)
- 1.3 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.

## Schedule 20 (Processing Data)

### Status of the Controller

- a. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
- i) “Controller” in respect of the other Party who is “Processor”;

- ii) “Processor” in respect of the other Party who is “Controller”;
- iii) “Joint Controller” with the other Party;
- iv) “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**

- b. 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.
- c. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- d. 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:
  - i) a systematic description of the envisaged Processing and the purpose of the Processing;
  - ii) an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- e. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
  - i) 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;
  - ii) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the

Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- a) nature of the data to be protected;
  - b) harm that might result from a Personal Data Breach;
  - c) state of technological development; and
  - d) cost of implementing any measures;
- iii) ensure that :
- a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
  - b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (1) are aware of and comply with the Processor's duties under this Schedule 20, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*);
    - (2) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (3) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (4) have undergone adequate training in the use, care, protection and handling of Personal Data;
- iv) 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:
- a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - b) the Data Subject has enforceable rights and effective legal remedies;

- c) 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
  - d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - v) 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.
- f. Subject to paragraph 7 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:
  - i) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - ii) receives a request to rectify, block or erase any Personal Data;
  - iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - v) 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
  - vi) becomes aware of a Personal Data Breach.
- g. The Processor's obligation to notify under paragraph 6 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- h. 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 6 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:

- i) the Controller with full details and copies of the complaint, communication or request;
  - ii) 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;
  - iii) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - iv) assistance as requested by the Controller following any Personal Data Breach; and/or
  - v) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- i. 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:
  - i) the Controller determines that the Processing is not occasional;
  - ii) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - iii) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- j. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- k. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- l. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
  - i) notify the Controller in writing of the intended Subprocessor and Processing;
  - ii) obtain the written consent of the Controller;
  - iii) 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

- iv) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- m. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- n. 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).
- o. 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**

- p. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Schedule 20 (*Processing Data*).

#### **Independent Controllers of Personal Data**

- q. 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.
- r. 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.
- s. Where a Party has provided Personal Data to the other Party in accordance with paragraph 7 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.

- t. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- u. The Parties shall only provide Personal Data to each other:
  - i) to the extent necessary to perform their respective obligations under the Contract;
  - ii) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - iii) where it has recorded it in Annex 1 (*Processing Personal Data*).
- v. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- w. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- x. 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”**):
  - i) 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

- ii) 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:
    - a) 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
    - b) 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.
- y. 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:
  - i) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - ii) implement any measures necessary to restore the security of any compromised Personal Data;
  - iii) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - iv) 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.
- z. 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*).
- aa. 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*).
- bb. Notwithstanding the general application of paragraphs 2 to 15 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 16 to 27 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 Processors, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.

- 1.1 The contact details of the Buyer's Data Protection Officer are: [REDACTED]
- 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Buyer is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 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> <p><u>The Supplier will not need to access or process any Personal Data on behalf of the Buyer</u></p> <p><b>The Supplier is Controller and the Buyer is Processor</b></p> <p>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 2 to paragraph 15 of the following Personal Data:</p> <p><u>The Buyer will not need to access or process any Personal Data where the Supplier is the Controller</u></p>

	<p><b>The Parties are Joint Controllers</b></p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p><u>There is no Personal Data where the means of the processing will be determined by both Parties together</u></p> <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> <ul style="list-style-type: none"> <li>• <i>Business contact details of Supplier Personnel for which the Supplier is the Controller</i></li> <li>• <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></li> </ul>
Duration of the Processing	N/A
Nature and purposes of the Processing	N/A
Type of Personal Data	N/A

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Categories of Data Subject	N/A
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data	N/A

## **Annex 2 - Joint Controller Agreement**

### **1. 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 paragraphs 2-15 of Schedule 20 (Where one Party is Controller and the other Party is Processor) and paragraphs 7-27 of 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:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- (b) 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;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) 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 clause 1.2, 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.

### **2. Undertakings of both Parties**

2.1 The Supplier and the Buyer each undertake that they shall:

- (a) report to the other Party on request:

- (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) 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;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) 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;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) 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). 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;
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- (f) 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;

- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (i) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
  - (ii) 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;
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
  - (i) nature of the data to be protected;
  - (i) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) 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
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

2.2 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

### **3. Data Protection Breach**

3.1 Without prejudice to Clause 3.2, 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:

(a) 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;

(b) all reasonable assistance, including:

- (i) 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;
- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
- (iv) 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 clause 3.2.

3.2 Each Party shall take all steps 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:

(a) the nature of the Personal Data Breach;

(b) the nature of Personal Data affected;

(c) the categories and number of Data Subjects concerned;

(d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;

(e) measures taken or proposed to be taken to address the Personal Data Breach; and

(f) describe the likely consequences of the Personal Data Breach.

#### **4. Audit**

4.1 The Supplier shall permit:



- (a) 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
- (b) 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 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.

4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with clause 4.1 in lieu of conducting such an audit, assessment or inspection.

## **5. Impact Assessments**

5.1 The Parties shall:

- (a) 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
- (b) 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 GDPR.

## **6. 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.

## **7. Liabilities for Data Protection Breach**

7.1 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:

- (a) 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;
- (b) 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
- (c) 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 34 of the Core Terms (*Resolving disputes*).

7.2 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.

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

- (a) if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;
- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 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.

## **8. 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 10 of the Core Terms (*Ending the contract*).

## **9. Sub-Processing**

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

- (a) 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
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **10. 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 21 (Variation Form)

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

Contract Details		
This variation is between:	<b>[Buyer]</b> ("the Buyer") And <b>[insert]</b> name of Supplier ("the Supplier")	
Contract name:	<b>[insert]</b> name of contract to be changed ("the Contract")	
Contract reference number:	<b>[insert]</b> contract reference number	
Details of Proposed Variation		
Variation initiated by:	<b>[delete]</b> as applicable: Buyer/Supplier	
Variation number:	<b>[insert]</b> variation number	
Date variation is raised:	<b>[insert]</b> date	
Proposed variation		
Reason for the variation:	<b>[insert]</b> reason	
An Impact Assessment shall be provided within:	<b>[insert]</b> number] days	
Impact of Variation		
Likely impact of the proposed variation:	<b>[Supplier to insert]</b> assessment of impact	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li><b>[Buyer to insert]</b> original Clauses or Paragraphs to be varied and the changed clause</li> </ul>	
Financial variation:	Original Contract Value:	£ <b>[insert]</b> amount]
	Additional cost due to variation:	£ <b>[insert]</b> amount]
	New Contract value:	£ <b>[insert]</b> amount]

**Schedule 21 (Variation Form)**

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

**Schedule 21 (Variation Form)**  
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Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

---

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

Signature

Date

Name (in Capitals)

Address

## Schedule 22 (Insurance Requirements)

### 1. The insurance you need to have

- 1.1 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
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (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;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 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.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 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;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 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.

### 3. What happens if you aren't insured

- 3.1 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.

- 3.2 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.

#### **4. Evidence of insurance you must provide**

- 4.1 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.

#### **5. Making sure you are insured to the required amount**

- 5.1 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.

#### **6. Cancelled Insurance**

- 6.1 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.
- 6.2 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.

#### **7. Insurance claims**

- 7.1 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.
- 7.2 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 10% of the sum required to be insured pursuant to Paragraph 5.1 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.



**Schedule 21 (Variation Form)**

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- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 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

1. The Supplier shall hold the following insurance cover from the Start Date in accordance with this Schedule:
  - a. professional indemnity insurance [with cover (for a single event or a series of related events and in the aggregate) of not less than] ten million pounds (£10,000,000);
  - b. public liability insurance [with cover (for a single event or a series of related events and in the aggregate)] of not less than ten million pounds (£10,000,000); and
  - c. employers' liability insurance [with cover (for a single event or a series of related events and in the aggregate) of not less than] ten million pounds (£5,000,000).

## Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan			
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by Buyer :		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Default:	[add effect]		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Default	[X] Working Days		

Steps taken to prevent recurrence of Default	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## Schedule 26 (Corporate Social Responsibility)

### 1. What we expect from our Suppliers

- 1.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  
([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))
- 1.2 The Buyer expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, the Buyer expects its suppliers and subcontractors to comply with the standards set out in this Schedule.

### 2. Equality and Accessibility

- 2.1 In addition to legal obligations, 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 each Contract in a way that seeks to:
- 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender

reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### **3. Modern Slavery, Child Labour and Inhumane Treatment**

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

#### **3.1 The Supplier:**

- 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of the Contract 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;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 3.1.8 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 Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

## **4. Income Security**

### **4.1 The Supplier shall:**

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- 4.1.3 provide all workers with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;
- 4.1.4 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;
- 4.1.5 record all disciplinary measures taken against Supplier Staff; and
- 4.1.6 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **5. Working Hours**

### **5.1 The Supplier shall:**

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into account:
  - (a) the extent;
  - (b) frequency; and
  - (c) hours worked;

by individuals and by the Supplier Staff as a whole;

- 5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
- 5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
  - 5.3.1 this is allowed by national law;

- 5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;  
  
appropriate safeguards are taken to protect the workers' health and safety; and
  - 5.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **6. Sustainability**

- 6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:  
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>