

## SHORT CONTRACT CONDITIONS

*These conditions shall not apply where the supply of goods or services is subject to the terms of a framework contract between the Contractor and the Authority or any other government department or agency. These short form conditions of contract shall not take precedence over or replace any existing Contractual agreements between the Contractor and the Authority.*

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### Annexes

- A **Supplier Code of Conduct (Generic – not Programme!) / Supplier Code of Conduct (Programme including ODA)**
- A.1 **Compliance with the Code and contractual checking mechanisms (Programme including ODA)**
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- A.3 **UN Global Compact – Human Rights (Programme including ODA)**
- B.1 Processing, Personal Data and Data Subjects Schedule
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- C Security **[Optional]**

## 1. INTERPRETATION

### 1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Authority”	“Authority” means the Secretary of State for Foreign, Commonwealth and Development Affairs and includes the Authority’s Representative. In this Contract, the Authority is acting as part of the Crown.
“Authority’s Representative”	means the individual authorised to act on behalf of the Authority for the purposes of the Contract;
“Condition”	means a clause in the Contract;
“Confidential Information”	means the terms of this Contract, together with all information in whatever form and on whatever media of either party which relates to the business, affairs, trade secrets, products, services, marketing plans, software, databases, know-how, personnel, customers or suppliers of either party (as the case may be), whether marked as confidential or which otherwise may reasonably be regarded as the confidential information of a party and which is disclosed or acquired at any time whether before or after the Contract Commencement Date as a result or in anticipation of this Contract;
“Contractor”	means the supplier of the Goods or Services;
“Contract”	means the agreement between the Authority and the Contractor consisting of these Conditions together with any amendments and/or additions thereto as specified on the Purchase Order;
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”	take the meaning given in the GDPR;
“Credit transfer”	is a payment instruction from the Authority to its bank or payment service provider to transfer an amount of money to another account.
“Crown Body”	means any department, office or agency of the Crown “FOIA” means the Freedom of Information Act 2000;
“DPA 2018”	means the Data Protection Act
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Protection Legislation”	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Subject Request”	means 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;
“Gateway”	means a review which may be conducted by or for a government department into whether or not a programme, project or any activity is making progress in line with agreed objectives;

“GDPR”	means the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> );
"Goods"	means anything which the Contractor supplies to the Authority under the Contract including any materials provided as part of the Service;
“A GPC (Government Procurement Card)”	is a credit card used for purchasing and/or payment;
“Intellectual Property Rights”	means patents, trademarks, service marks, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
“Joint Controllers”	means where two or more Controllers jointly determine the purposes and means of processing
“LED”	means the Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> )
“Law”	means 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 Processor is bound to comply;
“Notice”	means information from either Party to the other Party about a particular action that has been taken;
“Party”	means a Party to this Agreement;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it <b>[including those outlined in Annex C]</b> .
“Purchase Order”	means the form, on the other side of these Conditions or attached separately, which the Authority sends to the Contractor setting out the Authority’s specific requirements, the contract terms which apply to the Goods and/or Services and any documents referred to therein;
“Regulatory Body”	means any organisation/authority that is authorised to set directions for or monitor standards set out in law;
“Services”	means all the services (including any works) which the Contractor provides to the Authority under the Contract;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement;
“The Crown”	means any central government department of the United Kingdom, or a Devolved Administration, or any other body which is legally defined as a Crown Body.

## 2. SUPPLY OF GOODS

- 2.1 The Contractor shall supply the Goods specified in the Contract. Goods may be returned at the Contractor's expense if they do not correspond with the Contract and/or any sample provided.
- 2.2 All Goods shall be transported at the Contractor’s risk and delivered, carriage paid, in the quantities and at the time and place specified in the Purchase Order. Where no delivery time is stipulated by the Authority the

Goods and/or provision of Services shall be made within ten working days of receipt of the order by the Contractor.

2.3 The Authority may notify the Contractor of a change in the specified delivery time/date up to **[insert time period i.e. 24 hours]** before delivery.

2.4 The Contractor shall provide a delivery note with all deliveries as well as other appropriate documentation and/or copies of proof of deliveries as reasonably requested by the Authority. Such documentation must clearly show the Authority's Purchase Order number and date.

2.5 If the Contractor requires packaging to be returned, it will be returned at the Contractor's expense.

### **3. SUPPLY OF SERVICES**

3.1 The Contractor shall perform the Services in the manner and exercising that degree of skill, care, diligence, which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing the same or similar services as the Contractor in the same or similar circumstances as are relevant for the purposes of the Contract.

3.2 Where no delivery time is specified by the Authority the Services shall be provided within **[insert time period i.e. 10 working days]** of receipt of the order by the Contractor unless otherwise agreed between the parties.

3.3 The Contractor shall make good at its own expense any defects in the Service and/or workmanship which exist or may appear up to **[insert time period i.e. 6 months]** after completion of the Service.

3.4 Where applicable, the Contractor must provide the Authority with a copy of its insurance certificate under the Construction Industry Tax Deduction Scheme before commencing the Services.

### **4. SUBJECT MATTER OF THE CONTRACT AND CONTRACT PERIOD**

4.1 This Contract is for **[insert a description of the goods/services that are being provide under the Contract]**

4.2 The Contract period begins on **[insert start date]** and ends on **[insert end date]**

### **5. TITLE AND RISK**

5.1 The title and risk in any Goods shall pass to the Authority upon acceptance by the Authority, in accordance with [Condition 6 \(Acceptance\)](#).

### **6. ACCEPTANCE**

6.1 The Authority shall not be deemed to have accepted the goods until one of its officers has been afforded a reasonable opportunity to examine them.

### **7. PAYMENT**

7.1 The Authority may elect to pay for the Services by Contractor invoice via credit transfer or by Government Procurement Card.

7.2 The price that the Authority shall pay for the Goods and/or Service is as set out on the Purchase Order and unless otherwise stated incorporates all incidental costs (except for VAT) incurred by the Contractor in providing the Goods and/or Service including but not limited to administration, collection, transport, packaging and disposal. For the avoidance of doubt, unless otherwise stated, all prices are exclusive of VAT.

#### Payment against invoice

7.3 The Contractor shall submit an invoice within 28 days of supplying the Goods or Services to the satisfaction of the Authority. The invoice must show the amount of VAT payable, bear the Authority's relevant purchase order number and be sent to the invoicing address defined in the contract award letter.

7.4 The Authority shall pay the Contractor within 30 days of receipt of an undisputed invoice by payment direct to the Contractors bank account as a credit transfer.

### **8. WARRANTIES AND ACKNOWLEDGEMENTS**

#### **Supply of Goods**

8.1 The Contractor warrants that the Goods which it is providing correspond to the description and/or sample given to the Authority by the Contractor and all other warranties, conditions or terms relating to the fitness for purpose, quality or condition of the Goods implied by statute or common law apply in relation to this Contract and may not be excluded.

8.2 The Contractor warrants that title to the Goods is free from all encumbrances and that the Contractor has the right to sell the same.

#### **Supply of Services**

8.3 The Contractor warrants that the Services which it provides under the Contract correspond to the Authority's requirements and is consistent with the standards that are referred to in [Condition 3.1 \(Supply of Services\)](#) and any other standards which may be implied by statute or common law that apply to this Contract may not be excluded.

## 9. REMEDIES

### Supply of Goods

9.1 If the Contractor does not deliver Goods on time the Authority may terminate the Contract and claim losses from the Contractor.

9.2 If the Contractor delivers faulty Goods to the Authority, the Authority may within a reasonable time period (at least 3 months from the date of delivery):

- (a) notify the Contractor of the defect in such Goods and
- (b) may request the Contractor to replace, repair or reinstate the Goods within such time period as is reasonable in the circumstances (no less than 24 hours).

9.3 Where the Contractor fails to comply with a request made under [Condition 9.2\(b\) above \(Supply of Goods\)](#), the Authority shall be entitled to a full refund and may cancel any further deliveries due at the Contractor's expense.

### Supply of Services

9.4 If the Contractor provides defective Services the Authority may require that they put this right within a reasonable specified time. Where the Contractor fails to comply with such a request within the specified time the Authority may carry out the remedial measures itself or through another contractor and recover any costs incurred from the Contractor. Any costs and expenses incurred may be set off against any monies owing to the Contractor.

## 10. PREVENTION OF CORRUPTION

10.1 The Authority may terminate this Contract and recover all its losses if the Contractor, their employees or anyone acting on the Contractor's behalf corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know this has been done); or commits an offence under the Bribery Act 2010.

## 11. OFFICIAL SECRETS ACTS

11.1 The Contractor shall take all reasonable steps to ensure that all persons employed by him or by any sub-contractor in connection with the Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any work under or in connection with the Contract.

## 12. CONFIDENTIALITY

12.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.

12.2 The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.

12.3 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

12.4 [Condition 12.2 \(Confidentiality\)](#) shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations 2004 pursuant to Condition 19.1 (Disclosure of Information);
- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

- (e) it is independently developed without access to the other party's Confidential Information.
- 12.5 The Contractor may only disclose the Authority's Confidential Information to the persons it has employed or engaged who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such persons are aware of and shall comply with these obligations as to confidentiality.
- 12.6 The Contractor shall not, and shall procure that the persons it has employed or engaged do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 12.7 At the written request of the Authority, the Contractor shall procure that those persons it has employed or engaged identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 12.8 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- (a) to any Crown Body or Overseas Governments. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
  - (b) to any consultant, contractor or other person engaged by the Authority or any person conducting a Gateway or other assurance review;
  - (c) for the purpose of the examination and certification of the Authority's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 12.9 The Authority shall use all reasonable endeavours to ensure that any Crown Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to [Condition 12.8 \(Confidentiality\)](#) is made aware of the Authority's obligations of confidentiality.
- 12.10 Nothing in this [Condition 12 \(Confidentiality\)](#) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.11 In the event that the Contractor fails to comply with this [Condition 12 \(Confidentiality\)](#), the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.
- 12.12 The provisions under this [Condition 12 \(Confidentiality\)](#) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

### 13. INTELLECTUAL PROPERTY RIGHTS.

[The Authority must decide whether IPR in the Deliverables is to be vested in/owned by the Authority or the Contractor.]

[Option 1: IPR Vests in Authority]

- [13.1 Intellectual Property Rights in the Services and any Deliverables that are specifically developed or created for the Authority will be vested in the Authority (save that the Contractor will retain ownership of any Contractor Proprietary Materials which become imbedded in such Deliverables, which will be licensed in accordance with the provisions of [Condition 13.3 \(Intellectual Property Rights\)](#)). The Contractor agrees to (and will procure that its personnel acting as consultants will) assign and hereby assigns (including by way of future assignment in the case of copyrights) to the Authority with full title guarantee all of its worldwide rights, title and interest (whether present, future, vested or contingent) in and to such Intellectual Property Rights, including moral rights, for the full term thereof.
- 13.2 The Contractor will execute all such documents and undertake any and all such acts, including but not limited to obtaining assignments of Intellectual Property Rights from personnel of the Contractor to the Contractor as may from time to time be required in order to vest the rights assigned pursuant to [Condition 13.1 \(Intellectual Property Rights\)](#) above properly in the Authority.
- 13.3 Where the Deliverables contain any Contractor Proprietary Material, then the Authority will be granted a perpetual, non-exclusive, transferable, worldwide, royalty free licence in respect of such Contractor Proprietary Material, to the extent necessary to use such Deliverables (including for the purposes of their adaptation, modification and/or reproduction).
- 13.4 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in [Condition 13.1 \(Intellectual Property Rights\)](#). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or

actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.]

**[Option 2: IPR Vests in Contractor]**

- 13.1 Intellectual Property Rights in the Services and any Deliverables under this Contract shall be vested in and owned absolutely by the Contractor (save that the Authority will retain ownership of any Authority Proprietary Materials which become imbedded in such Deliverables).
- 13.2 The Contractor will grant the Authority a perpetual, non-exclusive, transferable, worldwide, royalty-free licence in respect of Intellectual Property Rights in the Services or any Deliverables under this Contract (including for the purposes of their adaptation, modification and/or reproduction).
- 13.3 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the licence set out in [Condition 13.2 \(Intellectual Property Rights\)](#). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.]

**14. FORCE MAJEURE**

- 14.1 Neither Party shall be liable for failure to perform its obligations under the contract if such failure results from circumstances beyond that Party's reasonable control. Strike action by a Party's staff is not a Force Majeure event.

**15. ENVIRONMENTAL REQUIREMENTS**

- 15.1 In providing the Goods or Services the Contractor shall comply with the Department's environmental policy, which is to conserve energy, water 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.
- 15.2 All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.
- 15.3 Maximum use must be made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging.
- 15.4 Packaging must be capable of recovery for reuse or recycling.

**16. HEALTH, SAFETY AND SECURITY**

- 16.1 The Contractor shall ensure that all of the Contractor's staff who have access to or are employed on the Authority's premises comply with the Authority's health, safety and security procedures and instructions and complete any additional security clearance procedures required by the Authority when working at the Authority's premises.

**17. ASSIGNMENT**

- 17.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the Authority.

**18. SUB-CONTRACTING**

- 18.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.
- 18.2 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:
- (a) The Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
  - (b) Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.
- 18.3 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

18.4 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.

18.5 For the avoidance of doubt, in this Contract all persons engaged by the Services Provider and used under this Contract (whether permanent or temporary) will be used as part of the Services provision offered by the Service Provider. Any and all persons engaged by the Services Provider shall sign terms of engagement with the Service Provider and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to deliver the Services under the Contract, the Services Provider is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

## **19. DISCLOSURE OF INFORMATION**

19.1 To enable compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, the Authority reserves the right to disclose information about this Contract pursuant to a valid request for information.

19.2 The Contractor shall not disclose any information relating to the Contract or the Authority's activities without the prior written consent of the Authority, which shall not be unreasonably withheld. Such consent shall not be required where the information is already in the public domain, is in the possession of the Contractor without restriction as to its disclosure, or is received from a third party who lawfully acquired it and is under no obligation restricting its disclosure.

19.3 The Authority is subject to the Data Protection Act 1998 and under the provisions of that Act it is a Data Controller and the Contractor is a Data Processor. To ensure that the Authority complies with its obligations under the Data protection Act 1998, the Contractor agrees:

- (a) to process Personal Data only in accordance with instructions from the Authority and only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- (b) to take appropriate organisational steps to protect the Personal Data from unauthorised or unlawful access or use, accidental loss, destruction, damage, alteration or disclosure.
- (c) to take reasonable steps to ensure the Contractor's Staff understand that the Personal Data is confidential and the importance of maintaining this confidentiality.
- (d) to obtain the Authority's consent in writing before transferring Personal Data to any sub-contractors or anyone else involved in providing the Services.

## **20. DISCRIMINATION**

20.1 The Contractor shall not unlawfully discriminate either directly or indirectly on protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, as amended from time to time.

## **21. CONFLICT OF INTEREST**

21.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for the Authority and that undertaken for other clients or the provision of Goods for the Authority and that undertaken for other clients. The Contractor shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Authority, including conflicts of interest which are likely to prejudice his independence and objectivity in performing the Contract, however this might arise.

21.2 The Contractor shall notify the Authority immediately of any circumstances it becomes aware of which give rise or potentially give rise to a conflict with the Contractor's provision of the Goods or Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation.

21.3 Where a potential or actual conflict of interest arises, the Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor in order to avoid or resolve the conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.



- 21.4 Where it considers further or extensive action is necessary to identify and/or manage a conflict of interest the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.
- 21.5 In the event of a failure to maintain the "Ethical Walls" as described in [Condition 21.4 \(Conflict of Interest\)](#) arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Contractor and to pursue the Contractor for damages.
- 21.6 If the Contractor's staff breach this Conflict of Interest Condition, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

## **22. LOSS OR DAMAGE**

- 22.1 The Contractor shall, without delay and at the Contractor's own expense, reinstate, replace or make good to the satisfaction of the Authority, or if the Authority agrees, compensate the Authority, for any loss or damage connected with the performance of the Contract, except to the extent that such loss or damage is caused by the neglect or default of the Authority. "Loss or damage" includes but is not limited to loss or damage to property, personal injury, sickness or death and loss of use suffered as a result of any loss or damage.

## **23. RECOVERY OF SUMS FROM CONTRACTOR**

- 23.1 Whenever under the Contract any sum or sums of money shall be recoverable from or payable by the Contractor to the Authority, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Authority or with any department, agency or office of Her Majesty's Government.

## **24. TERMINATION**

- 24.1 If the Contractor fails to fulfil its obligations under the Contract, the Authority may terminate the Contract immediately by written notice and, in accordance with [Condition 23 \(Recovery Of Sums From Contractor\)](#) may recover from the Contractor any reasonable costs necessarily and properly incurred by the Authority as a consequence of termination.
- 24.2 Without prejudice to [Condition 23.1 \(Recovery Of Sums From Contractor\)](#), the Authority shall at any time have the right to terminate the Contract or reduce the quantity of Goods or Services to be provided by the Contractor by giving the Contractor one month's written notice. During the period of notice the Authority may direct the Contractor to perform all or any of the work under the Contract. Where the Authority has invoked either of these rights, the Contractor may claim reasonable costs which it has incurred necessarily and properly as a result of the termination or reduction provided that the claim shall not exceed the total cost of the Contract. The Contractor's claim for reasonable costs shall not include loss of profit and consequential losses.
- 24.3 Termination or reduction under this provision shall not affect the rights of the parties to the Contract that may have accrued up to the date of termination.

## **25. INSURANCE**

- 25.1 Where relevant and/or required by law, the Contractor shall put in place and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

## **26. NOTICES**

- 26.1 A Notice may be served by the Authority on the Contractor in the following ways:
- (a) By delivery to the Contractor's place of business or any other address to which the Parties have agreed previously and recorded in writing that a Notice can be sent; or
  - (b) By sending it by facsimile to the Contractor; or
  - (c) By ordinary first class post to the Contractor's last known place of business or registered office.
- 26.2 A notice shall be deemed served at the time of delivery, after four hours for a facsimile, or on the second working day after posting.

## **27. VARIATIONS TO THE CONTRACT**

- 27.1 The Parties may agree a variation to the Contract but this will not be effective until it has been recorded in writing and signed by the Contractor and a senior officer of the Authority requiring the Services and/or Goods. This

Condition does not affect the Authority's sole right in [Condition 24.2 \(Termination\)](#) to reduce the quantity of Goods or Services which it requires under the Contract.

## **28. GENERAL**

- 28.1 These Conditions shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may seek to apply under any purchase order, confirmation of order, invoice, delivery note or similar document.
- 28.2 The Contractor shall be deemed to have accepted the terms and conditions of the Contract by delivering the Goods and/or Service.
- 28.3 Time for delivery of Goods and/or provision of the Service shall be of the essence of the Contract.
- 28.4 If either Party does not enforce any one or more of the terms or conditions of this Contract this does not mean that the Party has given up the right at any time subsequently to enforce all terms and conditions of this Contract.
- 28.5 The Authority shall in no circumstances be liable for any claim, loss or damage whether arising in contract, tort (including negligence) or otherwise, for consequential, economic, special or other indirect loss and shall not be liable for any losses calculated by reference to profits, contracts, business, goodwill, income, production or accruals whether direct or indirect and whether or not arising out of any liability of the Contractor to any other person.

## **29. DISPUTE RESOLUTION**

- 29.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract before taking any legal action.

## **30. LAW**

- 30.1 The Contract shall be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England.

## **31. TRANSPARENCY**

- 31.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOI Act. Notwithstanding any other term of this Contract, the Contractor gives consent to the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOI Act redacted) including from time to time agreed changes to the Contract, to the general public.
- (a) The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- (b) The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **32. DATA PROTECTION**

- 32.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in the [Processing, Personal Data and Data Subjects Schedule at Annex B.1](#). The only processing that the Processor is authorised to do is listed in the [Processing, Personal Data and Data Subjects Schedule at Annex B.1](#) by the Controller and may not be determined by the Processor.
- 32.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 32.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 32.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the [Processing, Personal Data and Data Subjects Schedule at Annex B.1](#), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the [Processing, Personal Data and Data Subjects Schedule at Annex B.1](#));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (a) are aware of and comply with the Processor's duties under this condition;
      - (b) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) 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;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) 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
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 32.5 Subject to [Condition 32.6 \(Data Protection\)](#), the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

- (f) becomes aware of a Data Loss Event.
- 32.6 The Processor's obligation to notify under [Condition 32.5 \(Data Protection\)](#) shall include the provision of further information to the Controller in phases, as details become available.
- 32.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under [Condition 32.5 \(Data Protection\)](#) (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 32.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this condition. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 32.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 32.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 32.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this condition  such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 32.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 32.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this condition by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 32.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 32.15 Where the Parties include two or more Joint Controllers as identified in the Processing, Personal Data and Data Subjects Schedule at [Annex B.1](#) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in the [Schedule at Annex B.2](#) in replacement of Conditions 32.1 - 32.14 (for the Personal Data under Joint Control)

[See Annex B.2 Joint Controller Agreement as this could replace above Conditions 32.2 to 32.14.](#)

**DRAFTING INSTRUCTION – INSERT non Programme Supplier Code of Conduct (H2B)**

**DRAFTING INSTRUCTION – INSERT Programme Supplier Code of Conduct (H2B)**

This Schedule 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 Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are: [DN: insert “contact details”]
2. The contact details of the Processor’s Data Protection Officer are: [DN: insert “contact details”]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Condition 14.1.</i></p> <p><i>Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</i></p> <p><i>“Notwithstanding Condition 14.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</i></p> <p><i>In respect of Personal Data under Joint Control, condition 14.1-14.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Annex 4.2 instead.”</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i></p>
Categories of Data Subject	<p><i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i></p>
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	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>

Description	<a href="#">Details</a>
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Guidance: INSERT only where Joint Controller applies in Annex 4.1 Processing, Personal Data and Data Subjects

1. In this Annex the Parties must outline each party's responsibilities for:
  - providing information to data subjects under Article 13 and 14 of the GDPR.
  - responding to data subject requests under Articles 15-22 of the GDPR
  - notifying the Information Commissioner (and data subjects) where necessary about data breaches
  - maintaining records of processing under Article 30 of the GDPR
  - carrying out any required Data Protection Impact Assessment
  - The agreement must include a statement as to who is the point of contact for data subjects.
2. Do you need to incorporate Conditions equivalent to those specified in Condition 32.2 - 32.14 (Data Protection)?
3. Do you need to include an additional Condition apportioning liability between the parties arising out of data protection; of data that is jointly controlled?
4. Where there is a Joint Control relationship, but no controller to processor relationship under the contract, this completed Annex B.2 Joint Controller Agreement should be used instead of Condition 32.2 - 32.14 (Data Protection).

OPTIONAL refer need to DSC if in doubt