

# Order Form

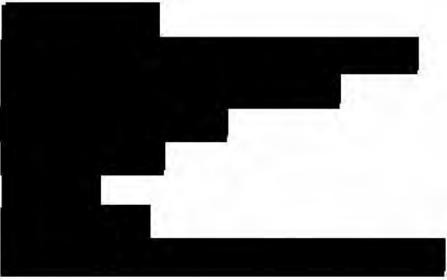
<p><b>1. Contract Reference</b></p>	<p>Covid-19/WS2/Butyl</p>	
<p><b>2. Date</b></p>	<p>1<sup>st</sup> May 2020</p>	
<p><b>3. Buyer</b></p>	<p><b>The Department of Health and Social Care</b>  </p>	
<p><b>4. Supplier</b></p>	<p><b>Butyl Products Limited</b> a company incorporated and registered in England and Wales with company number 03141465 and whose registered office is at </p>	
<p><b>5. The Contract</b></p>	<p>The Supplier shall supply the deliverables described below (being the Goods and the Services) on the terms set out in this Order Form and the contract terms and conditions set out in Annex 4 ("<b>Conditions</b>") and the quotation letters set out in Annex 3 ("<b>Quotations</b>").</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict or ambiguity between this Order Form, the Conditions, the Quotation and the Specification (as detailed below) a term contained in a document higher in the following list shall have priority over one contained in a document lower in the list:</p> <ul style="list-style-type: none"> <li>a) this Order Form;</li> <li>b) the Conditions;</li> <li>c) the Authorised Processing Template set out in Annex 1;</li> <li>d) the Specification; and</li> <li>e) the Quotation.</li> </ul> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract. Notwithstanding the provisions of the Quotations, the Supplier's standard terms and conditions of supply shall not be incorporated into nor form part of the Contract.</p>	
<p><b>6. Deliverables</b></p>	<p><b>Goods</b></p>	<p>The goods referred to in the Quotations and Specification, on a per-vehicle basis.</p> <p>Delivery of the Goods is to take place by way of the Supplier fitting out (pursuant to the Fitting Services) vehicles (of the type referred to in the Specification) provided by the Buyer ("<b>Vehicles</b>") with the Goods at the Supplier's registered office (at the date of this Order Form) (the "<b>Supplier's Premises</b>") and the collection of such Vehicles containing the Goods by </p>

	<p>the Buyer.</p> <p>Delivery of Goods is deemed to be completed upon collection of the relevant Vehicle containing the Goods by the Buyer from the Supplier's Premises.</p> <p>Delivery Address: the Supplier's Premises.</p> <p>Date of Delivery: the date of completion of the Fitting Services in relation to the relevant Vehicle, in accordance with the timescales set out in the Quotation and in line with instructions stated within a Purchase Order (if any).</p>
<p><b>Services</b></p>	<p>The Supplier will carry out vehicle fit out services and installation of the Goods into the rear interior of the Vehicles in accordance with the Quotation and the Specification ("<b>Fitting Services</b>").</p> <p>In addition, if required by the Buyer (exercisable by the Buyer on the issue of a Purchase Order to the Supplier) the Supplier will carry out services to:</p> <ul style="list-style-type: none"> <li>a) remove the Goods;</li> <li>b) remove and make good any alterations or fit out to the rear interior of the Vehicles that were implemented pursuant to the Fitting Services; and</li> <li>c) remedy any damage caused by or during the provision of the Fitting Services or the Unfitting Services (together the "<b>Unfitting Services</b>"), provided that the Unfitting Services shall exclude (without prejudice to clauses 4.2(l) and 4.3(j)) remedial works in relation to any damage:             <ul style="list-style-type: none"> <li>d) in existence prior to delivery of the Vehicle to the Supplier for the Fitting Services;</li> <li>e) caused during use of the Vehicles by the Buyer; or</li> <li>f) which is otherwise not caused by or during the provision of the Fitting Services or the Unfitting Services.</li> </ul> </li> </ul> <p>The Unfitting Services shall be carried out in relation to a Vehicle which has been the subject of Fitting Services upon the delivery of such Vehicle to the Supplier by the Buyer for the purposes of the Unfitting Services. The Unfitting Services shall be carried out within the timescales agreed by the Parties in line with instructions provided on a Purchase Order. The Unfitting Services shall be performed following the date of delivery of the relevant Vehicle to the Supplier ("<b>Unfitting Commencement Date</b>"). The Buyer shall collect each Vehicle following the performance of Unfitting Services in relation to it. For the avoidance of doubt, the provision of the Unfitting Services shall be subject to the limitations and exclusions of liability which apply in relation to the Contract.</p>



	<p>The Buyer and the Supplier agree that it is their intention that the Goods in a Vehicle will be re-sold by the Buyer to the Supplier upon commencement of the Unfitting Services in relation to that Vehicle and that the purchase price for the Goods will be set off against the Charges. The Buyer and the Supplier shall negotiate in good faith in order to agree terms upon which the Goods shall be sold by the Buyer to the Supplier and shall use all reasonable endeavours to agree such terms prior to the relevant Unfitting Commencement Date.</p> <p>The Fitting Services and the Unfitting Services shall be carried out at the Supplier's Premises.</p>
<p><b>7. Specification</b></p>	<p>The specification of the Deliverables is as set out in Annex 2.</p>
<p><b>8. Term</b></p>	<p>The Term shall be deemed to commence on 15 April 2020 and the Expiry Date shall be 14 July 2020, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract, in which case it shall be the last day of the period of the extension or the date of termination (as appropriate).</p> <p>The Buyer may extend the Contract for a period of up to 3 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.</p>
<p><b>9. Charges</b></p>	<p>The Charges for the Deliverables shall be as set out in the Quotations. The Charges for each element of the Deliverables are calculated on a per-Vehicle basis. The Buyer shall not be obliged to purchase all (or any) of the Deliverables in respect of every Vehicle referred to in the Quotation and the Charges shall relate only to those Deliverables which are actually provided.</p>
<p><b>10. Payment</b></p>	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>██</p> <p>Within <b>10 Working Days</b> of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to:</p> <p>██</p>



<p><b>11. Buyer Authorised Representative(s)</b></p>	<p>For general liaison your contact will be</p> 										
<p><b>12. Address notices for</b></p>	<table border="0"> <tr> <td style="vertical-align: top;"><b>Buyer:</b></td> <td style="vertical-align: top;"><b>Supplier:</b></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </table>	<b>Buyer:</b>	<b>Supplier:</b>								
<b>Buyer:</b>	<b>Supplier:</b>										
											
											
											
											
<p><b>13. Key Personnel</b></p>	<p><b>Not applicable</b></p>										
<p><b>14. Procedures and Policies</b></p>	<p>14.1 For the purposes of the Contract the Supplier is required to comply with the Policies set out in this section.</p> <p>14.2 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf</a></p> <p>The Buyer expects the Supplier and its subcontractors to meet the standards set out in that Code.</p> <p>14.3 "Modern Slavery Helpline" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at  <a href="https://www.modernslaveryhelpline.org/report">https://www.modernslaveryhelpline.org/report</a> or by telephone on 08000 121 700.</p> <p>14.4 The Supplier:</p> <ul style="list-style-type: none"> <li>a) shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;</li> <li>b) 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;</li> </ul>										



- c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- d) 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.
- e) 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.
- f) shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- h) 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;
- i) shall not use or allow child or slave labour to be used by its Subcontractors;
- j) shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

14.5 The Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and product liability in accordance with Good Industry Practice



	<p>with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by any legal provision applicable to the Supplier, however, the Supplier shall have responsibility for ensuring that it is adequately insured to cover all potential liability under this Contract.</p> <p>14.6 The amount of any indemnity cover arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self insurance arrangement is insufficient to cover the settlement of any claim.</p> <p>14.7 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.</p> <p>14.8 The Supplier shall from time to time and in any event within five (5) Working Days of written demand provide documentary evidence to the Buyer that insurance arrangements taken out by the Supplier pursuant to paragraphs 14.5 to 14.9 of this Order Form are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.</p> <p>14.9 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.</p>
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<p>Signed for and on behalf of the <b>Supplier</b></p> <div style="background-color: black; width: 100%; height: 80px; margin-top: 10px;"></div>	<p>Signed for and on behalf of the <b>Buyer</b></p> <div style="background-color: black; width: 100%; height: 80px; margin-top: 10px;"></div>
<p>Name:</p> <div style="background-color: black; width: 100%; height: 40px; margin-top: 5px;"></div>	<p>Name:</p> <p>[Insert name]</p> <div style="background-color: black; width: 100%; height: 20px; margin-top: 5px;"></div> <p>[Insert job title]</p> <div style="background-color: black; width: 100%; height: 20px; margin-top: 5px;"></div>

[Redacted]		[Redacted]	
Date:	[Redacted]	Date:	[Redacted]
Signature:	[Redacted]	Signature:	[Redacted]

## Annex 1 – Authorised Processing Template

<b>Contract:</b>	[XXXX]
<b>Date:</b>	[ ]
<b>Description Of Authorised Processing</b>	None
Subject matter of the processing	None
Duration of the processing	Not applicable
Nature and purposes of the processing	Not applicable
Type of Personal Data	Not applicable
Categories of Data Subject	Not applicable



## Annex 2 – Specification

### 1. INTRODUCTION

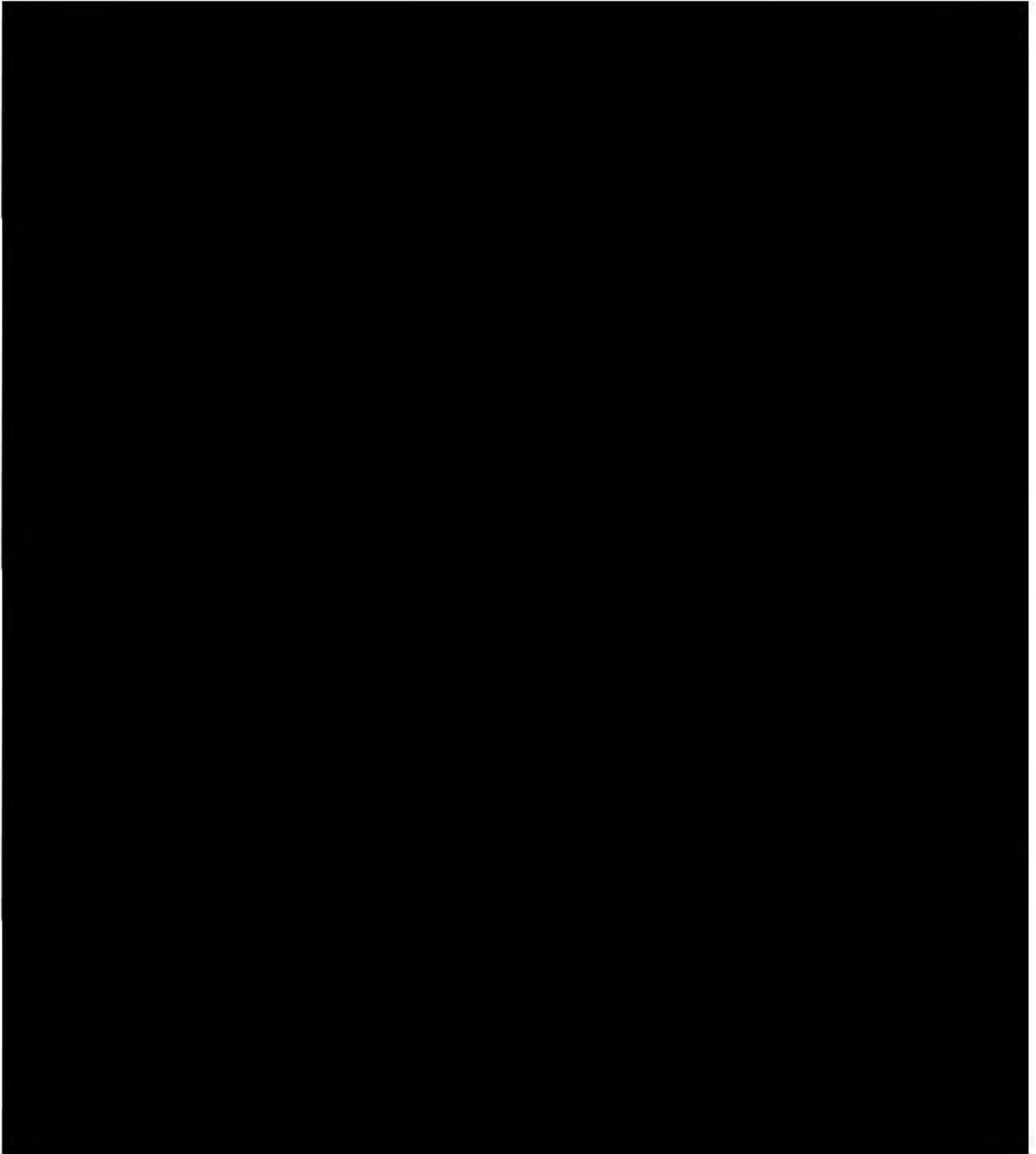
- 1.1 The Department for Health and Social Care (the “Buyer”) requires the provision of services and goods related to conversion of a fleet of vans for use as mobile testing units for Covid-19 nationally

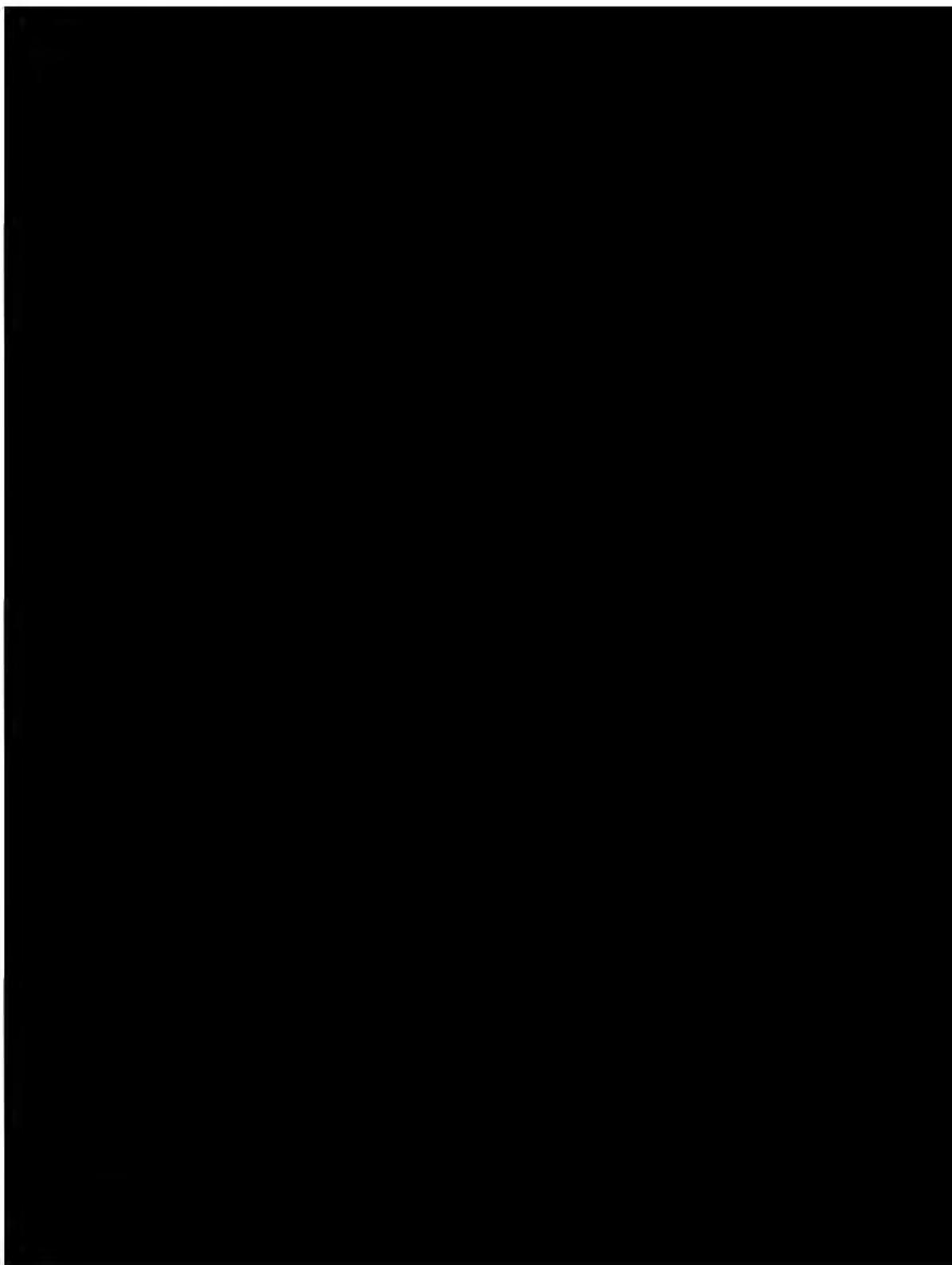
### 2. STRATEGIC OBJECTIVES

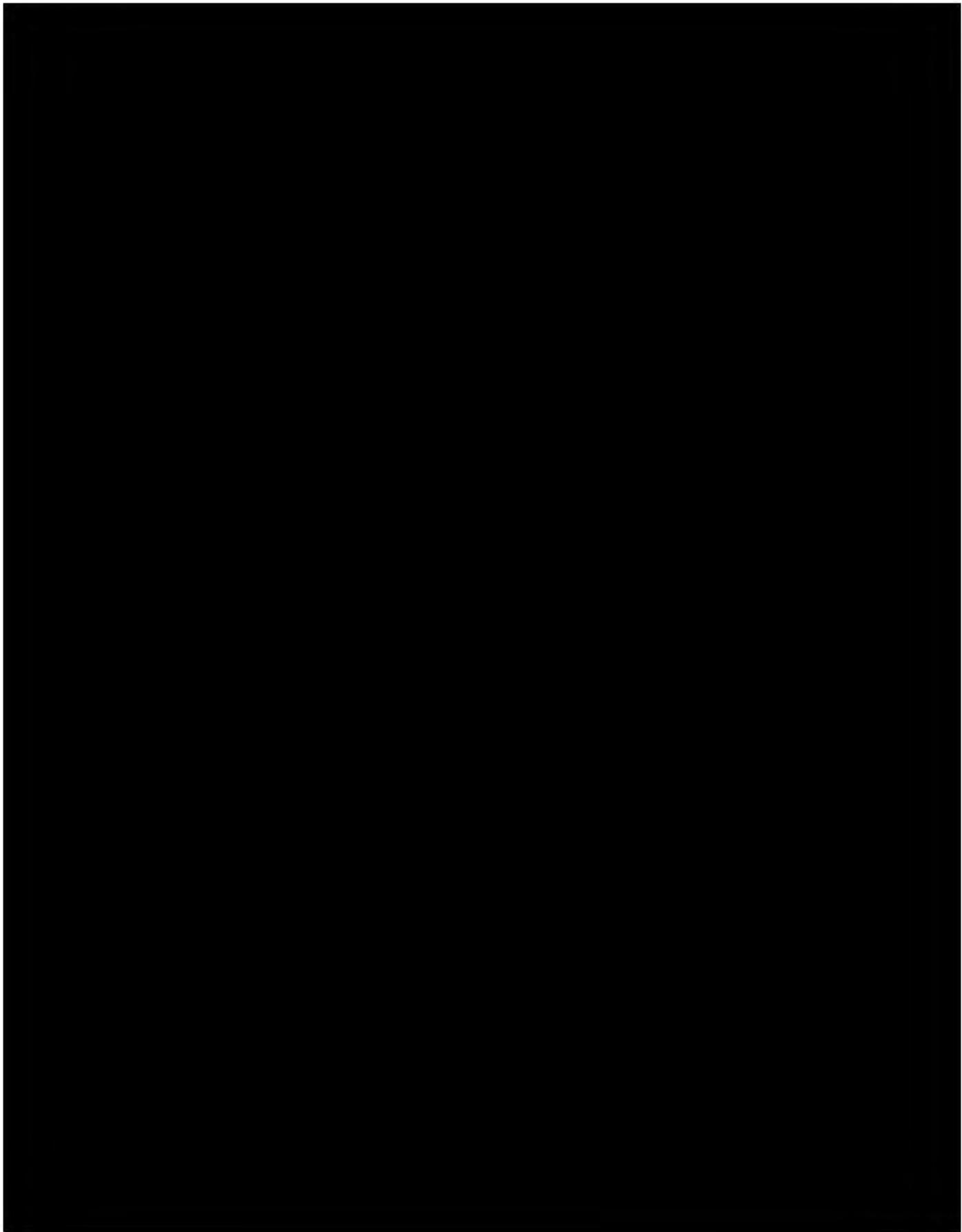
The Buyer is seeking urgent provision of conversion of vehicles and provision of goods in order to meet the following strategic objective to deliver mass-swab testing for critical key workers in the NHS, social care and other sectors This contributes to the stated Secretary of State priority of ramping up testing.

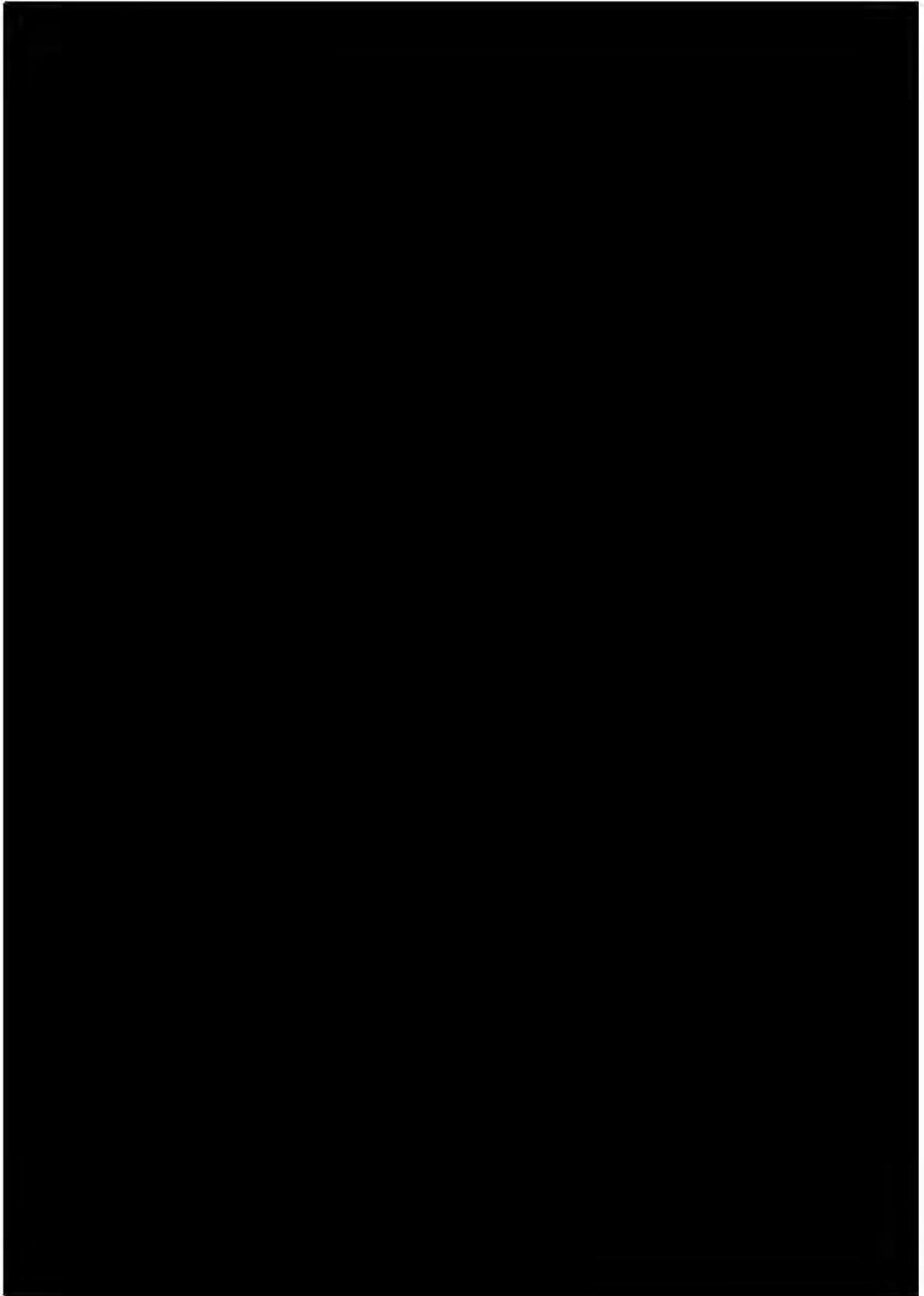
### 3. SCOPE AND SERVICES REQUIRED

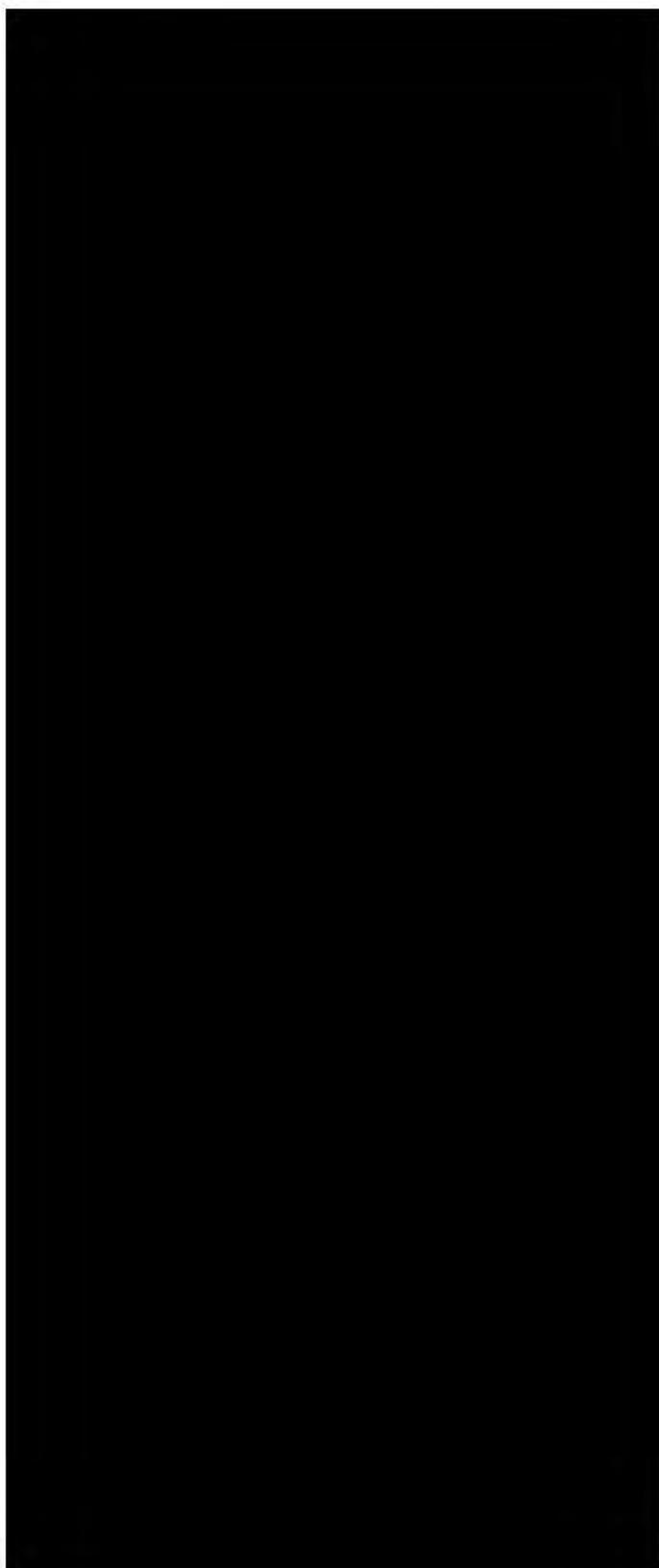
- 3.1 Following an initial trial on 17 April using the vehicle prototype built by Army Engineers, the specification of the Mobile Testing Units has been shared with the supplier. Vehicle hire is outside of the scope of this agreement and is provided by a different supplier, under a separate contract.
- 3.2 Under this contract the supplier is required to convert vehicles provided by the Buyer as clinically required, to include all supplies and rubber inserts moulded to the specifications of the van for sterilisation purposes. The conversion also includes fitting additional items within each vehicle.

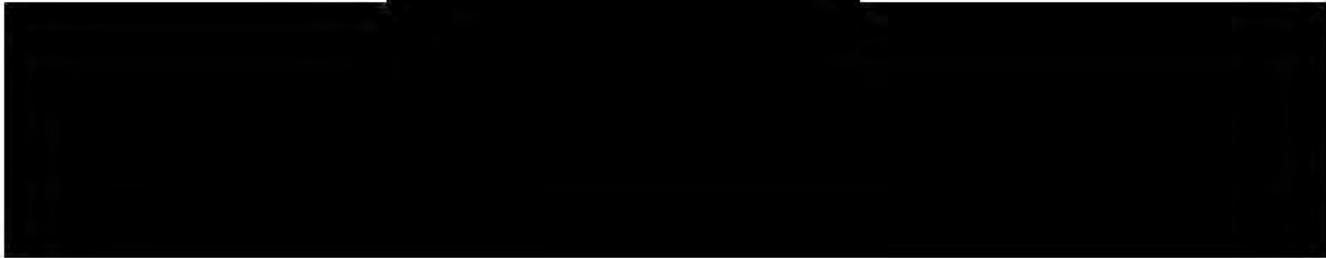
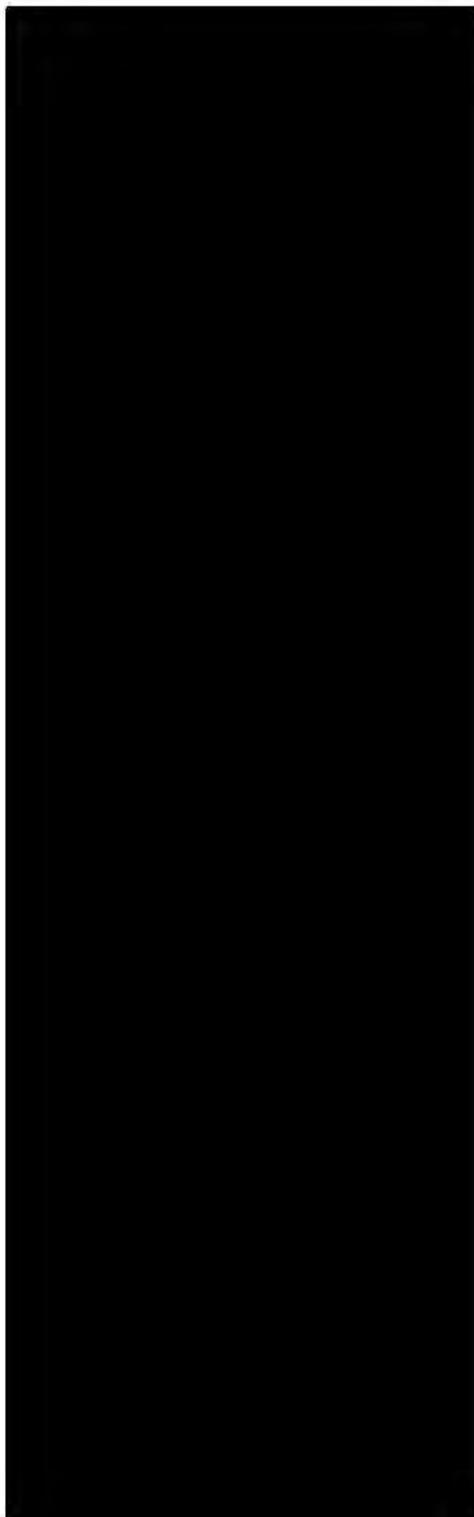












**4. IMPLEMENTATION AND DELIVERABLES**

- 4.1 Conversion services and fittings for the first fleet of ■ vehicles at standard delivery timescale and a further ■ vehicles at an increased delivery timescale are being delivered on or before 1<sup>st</sup> May 2020
- 4.2 Conversion services and fittings of the additional fleet of ■ vehicles at standard delivery timescale will be delivered on or before 15<sup>th</sup> May 2020
- 4.3 If unfitting services are required, timescales will be confirmed by the Buyer on a purchase order.

**5. SERVICE LEVELS AND PERFORMANCE**

**Supplier's Service Obligation:**

- 5.1 The Supplier is required to deliver services in line with the instructions shared by the Buyer

**KPIs**

- 5.2 The Supplier is required to provide services within the timescales indicated in each Purchase Order

**6. MANAGEMENT AND CONTRACT ADMINISTRATION**

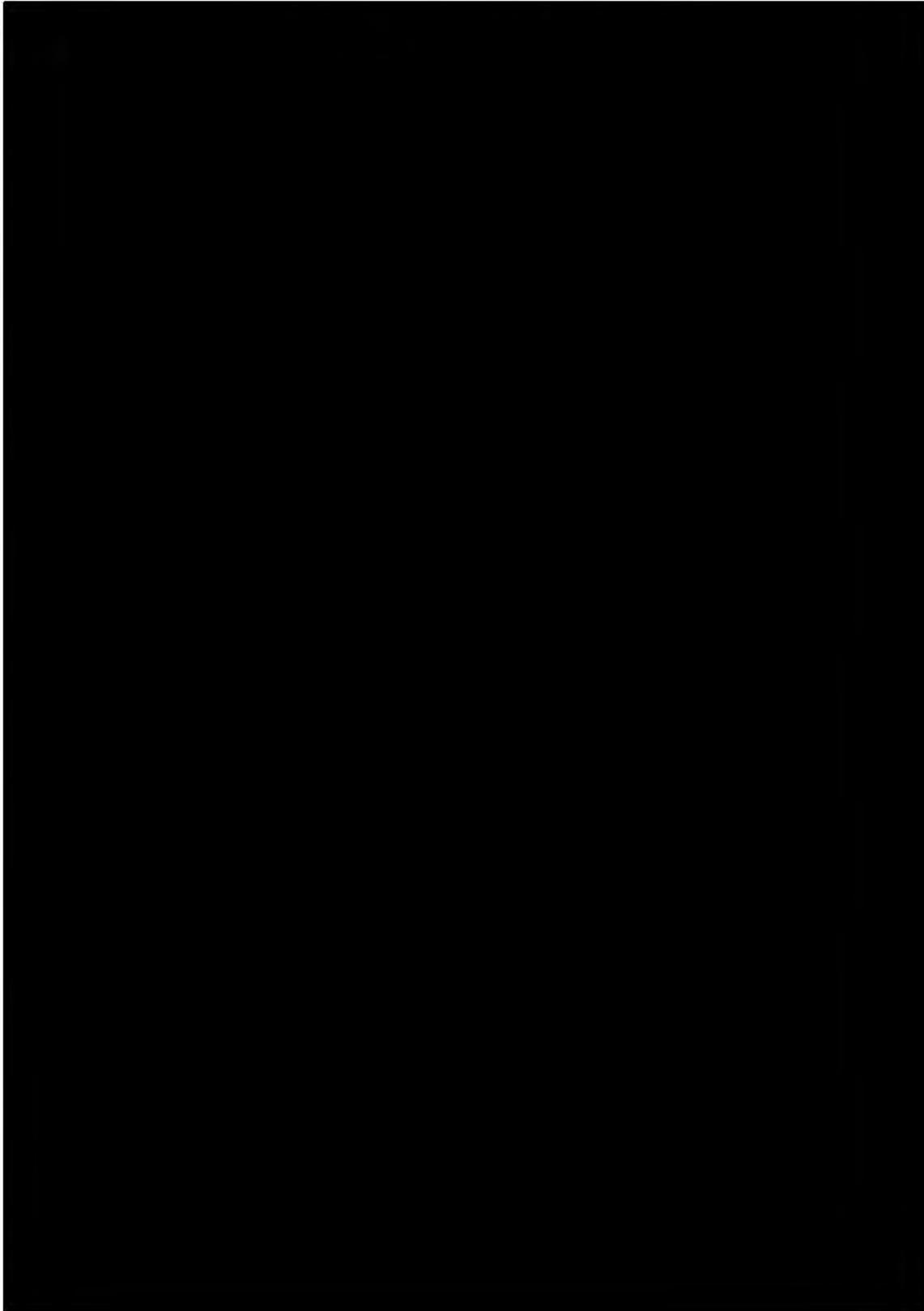
- 6.1 The Buyer will put in place appropriate contract management and performance measures based on the specifics of the contracted arrangement. Typically these will cover regular formal and informal meetings between the parties to review performance against Milestones, discuss progress and provide feedback.
- 6.2 The Supplier will be expected to work closely with Buyer officials throughout the term of any contract awarded and may be required from time to time to attend meetings in London.

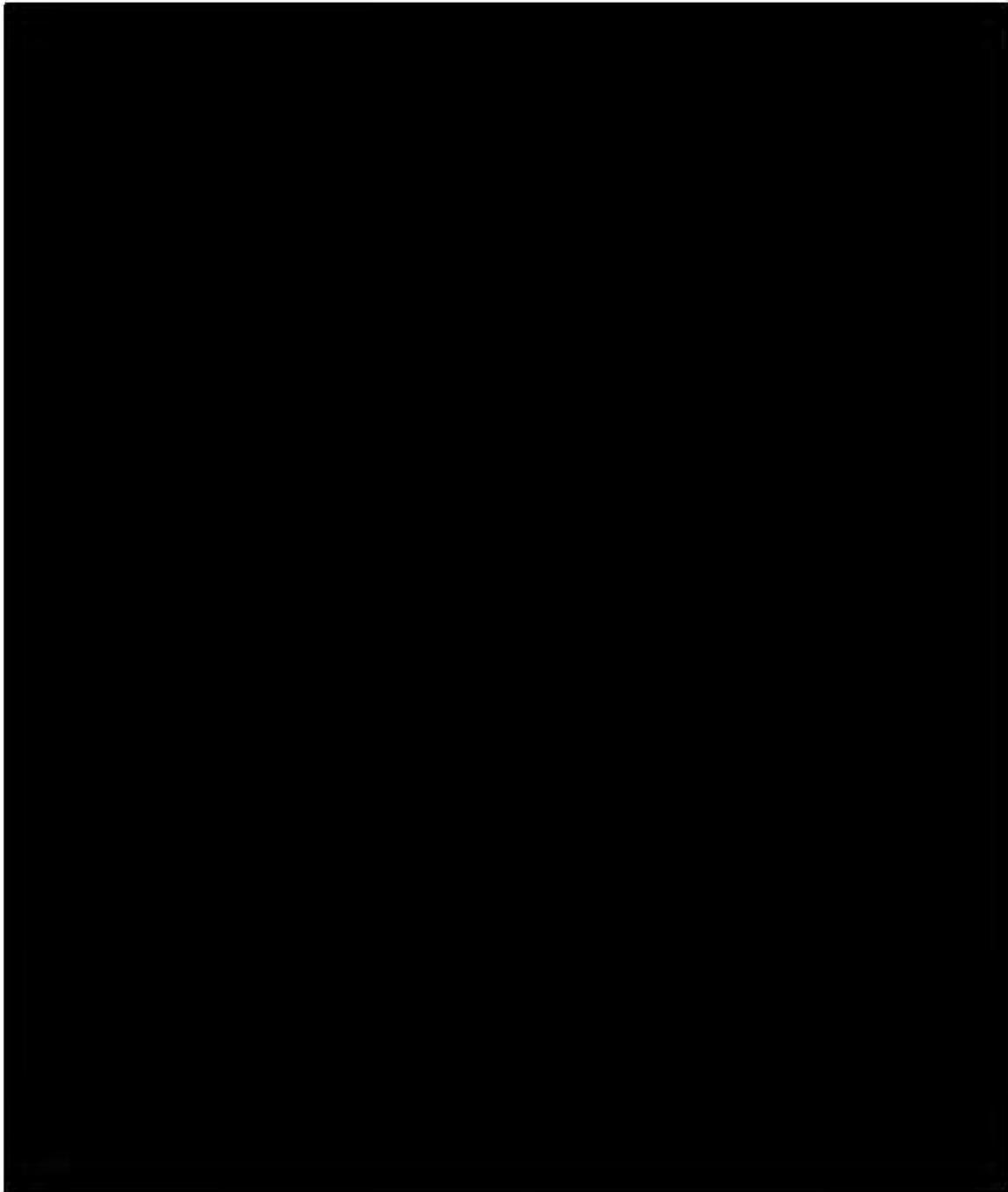
**Sub-contracting to Small and Medium Enterprises (SMEs).**

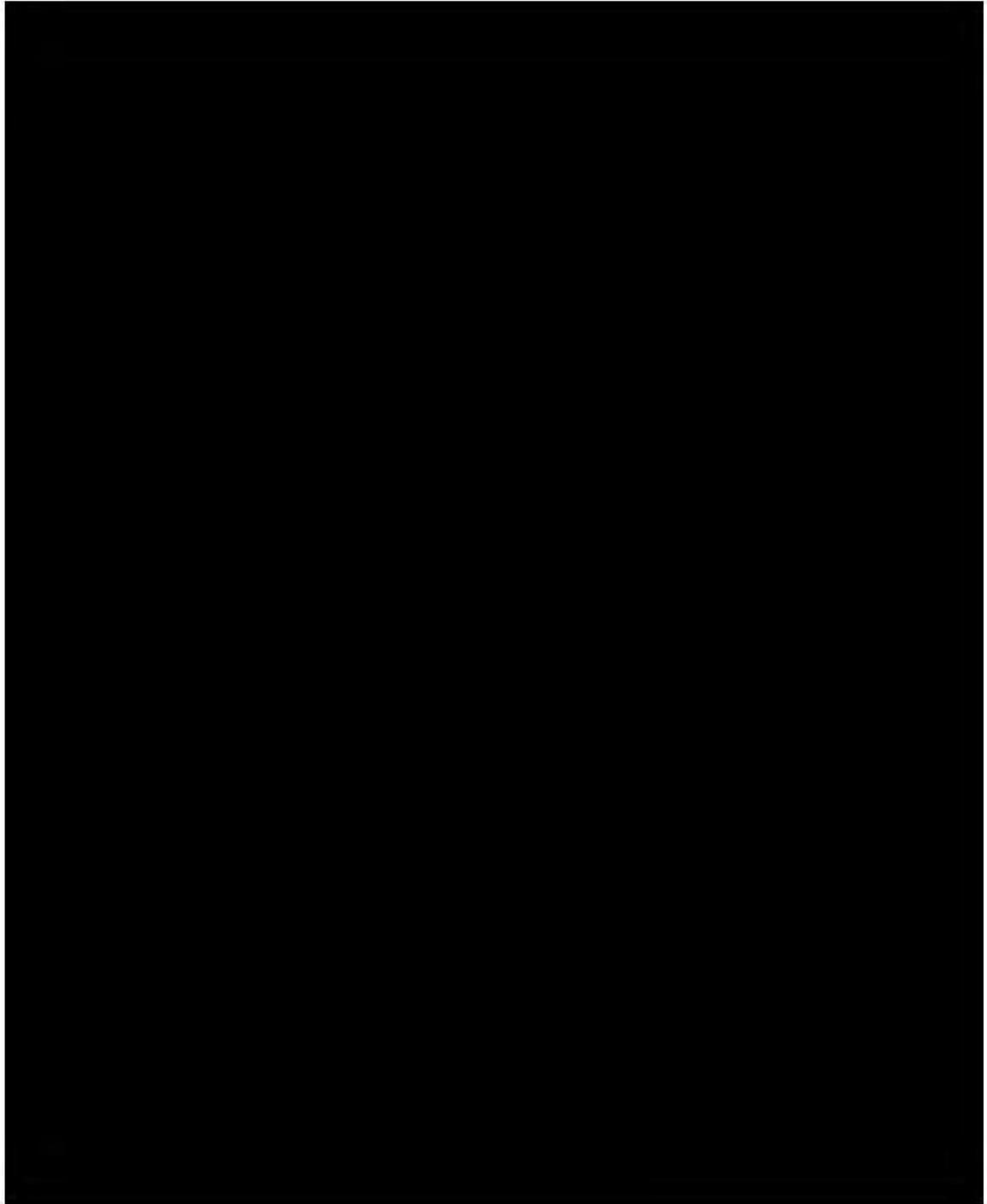
- 6.3 The Buyer is committed to removing barriers to SME participation in its contracts, and would like to also actively encourage its larger suppliers to make their sub-contracts accessible to smaller companies and implement SME-friendly policies in their supply-chains.

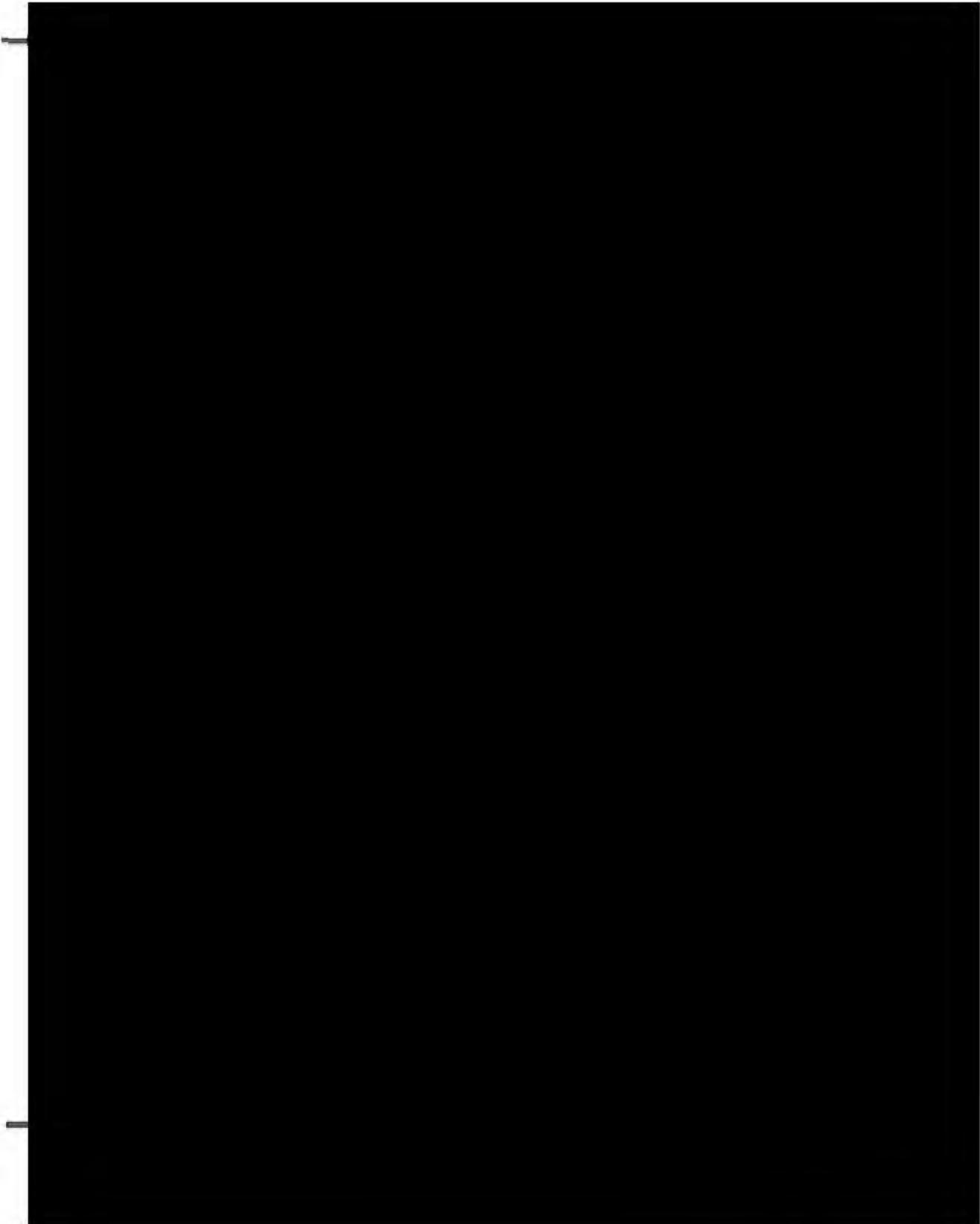


## Annex 3 – Quotations









If you require any further information please do not hesitate to contact us.

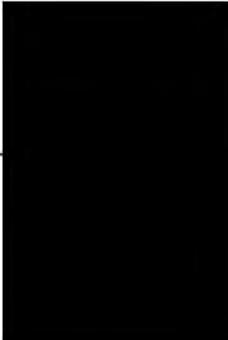
Yours faithfully

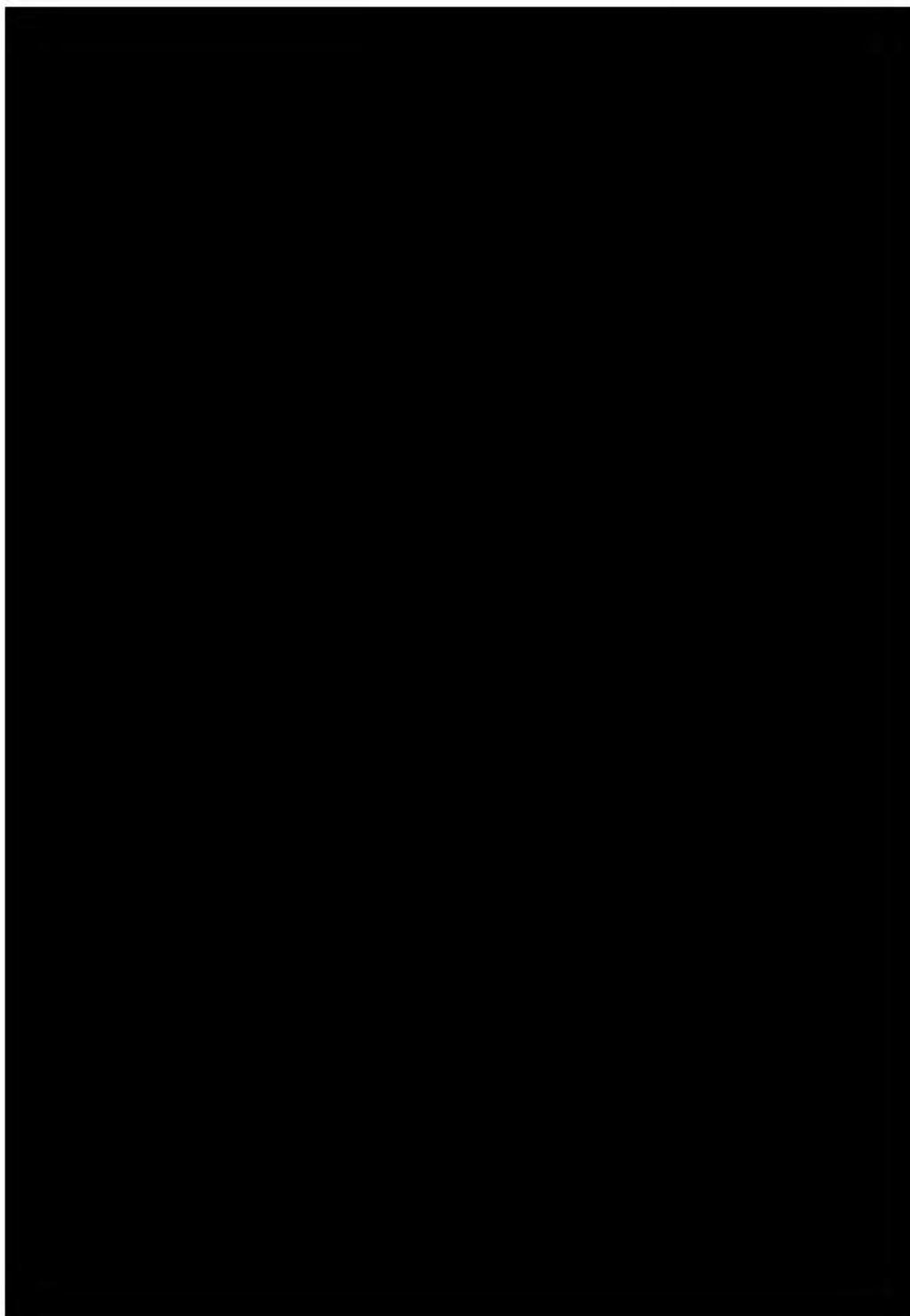
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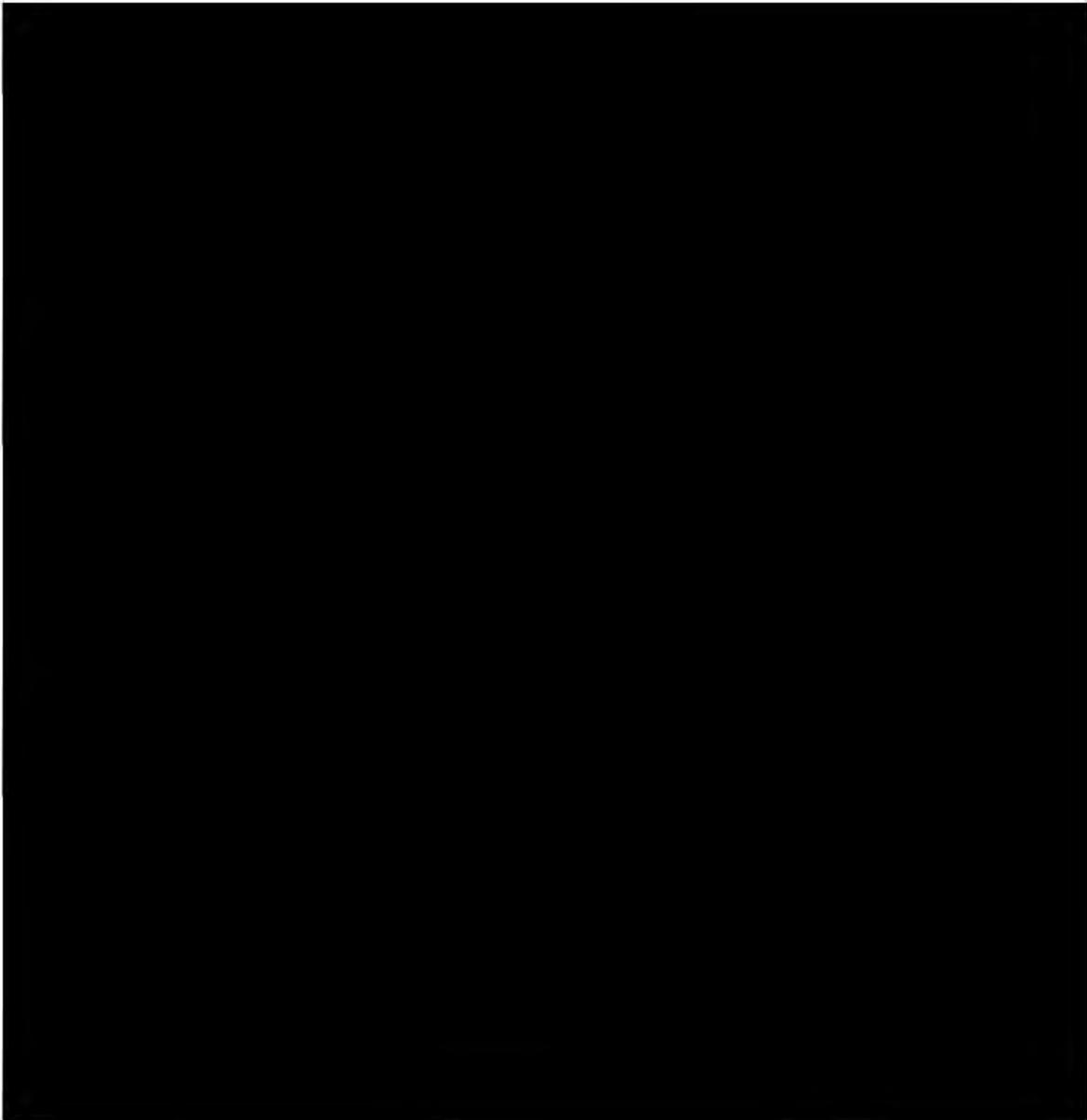
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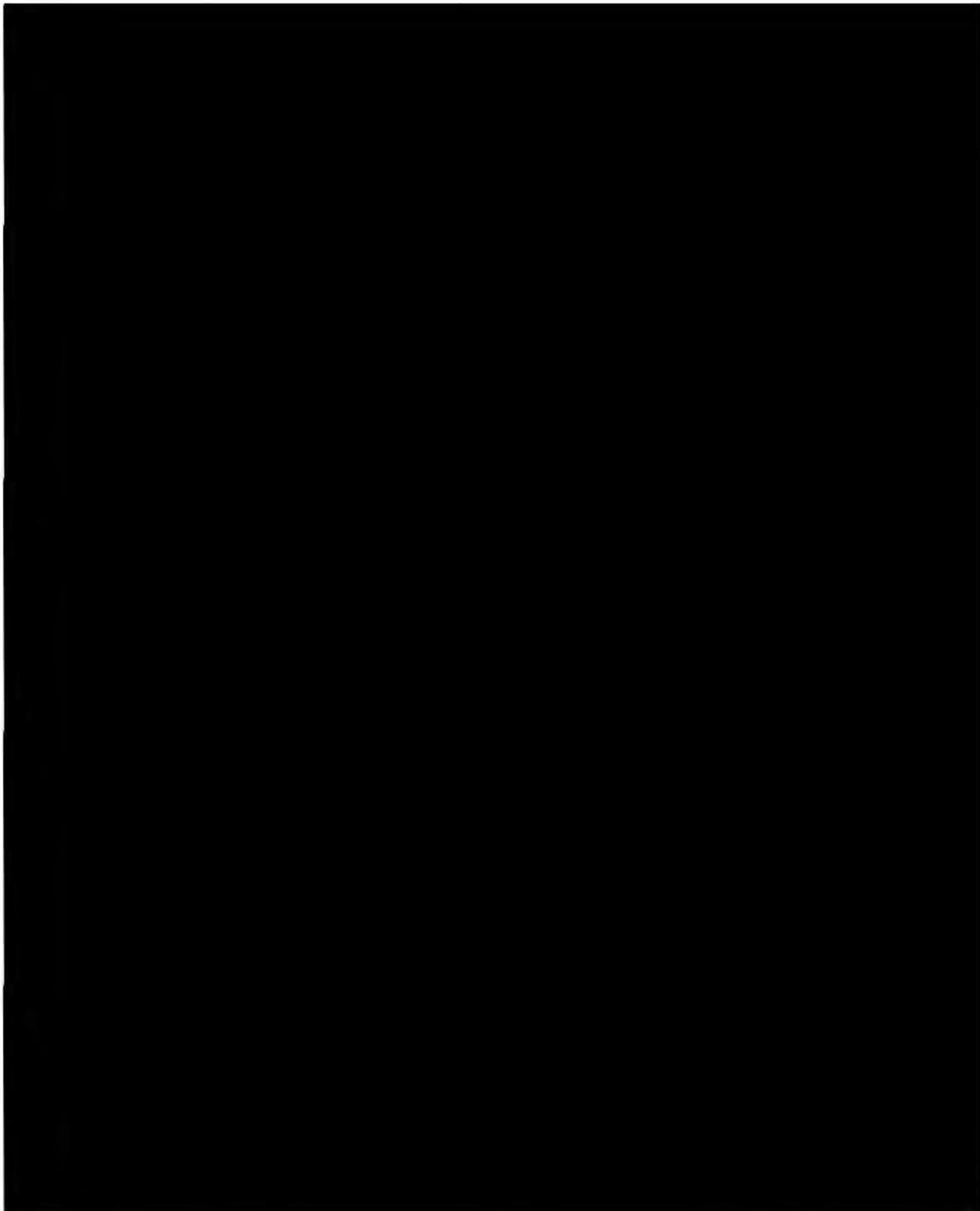
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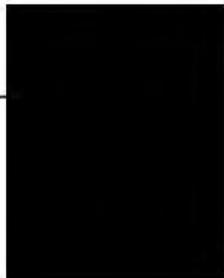
If you require any further information please do not hesitate to contact us.

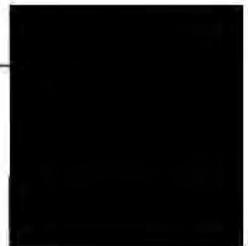
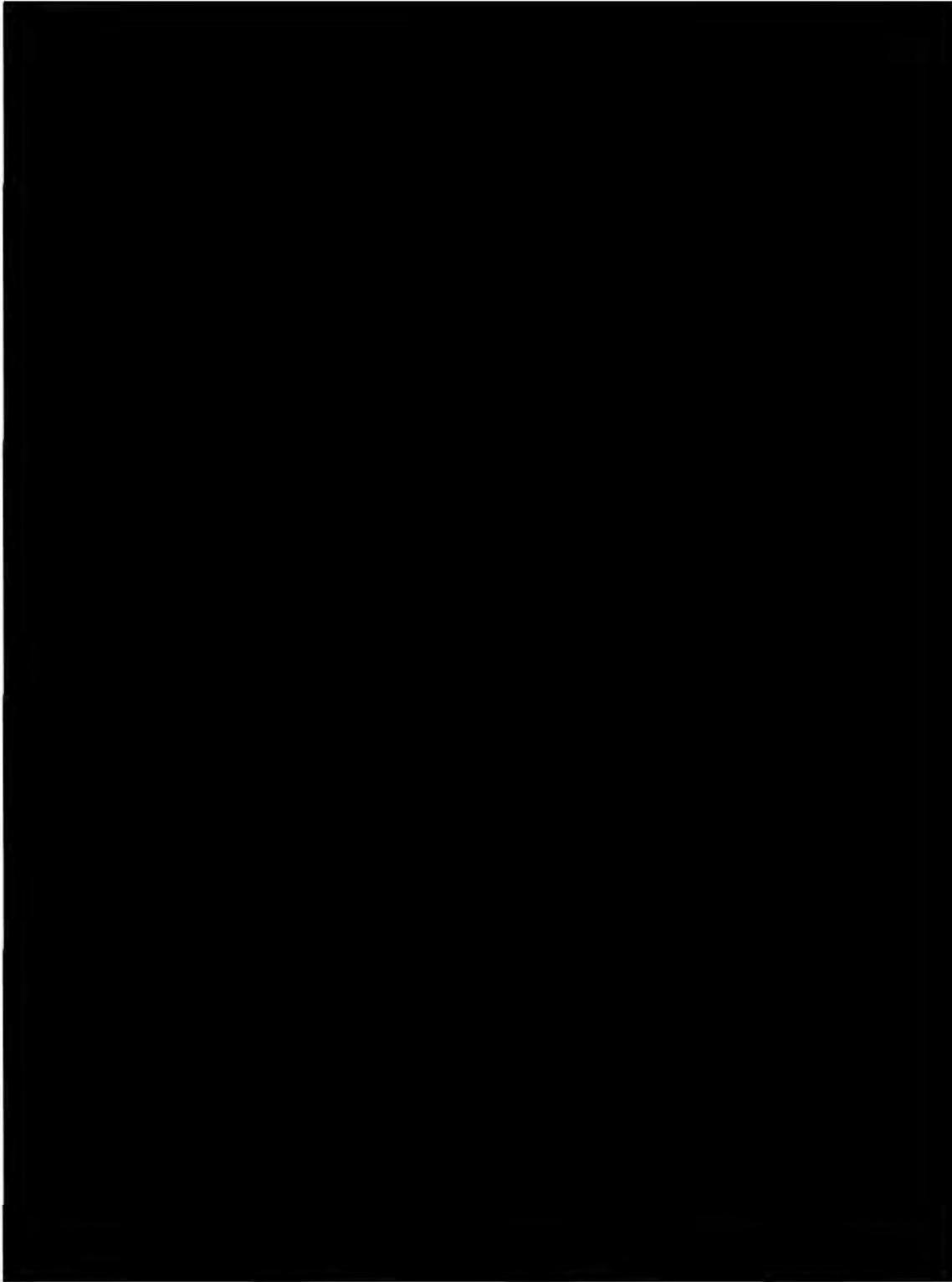
Yours faithfully  
for Butyl Products Ltd.

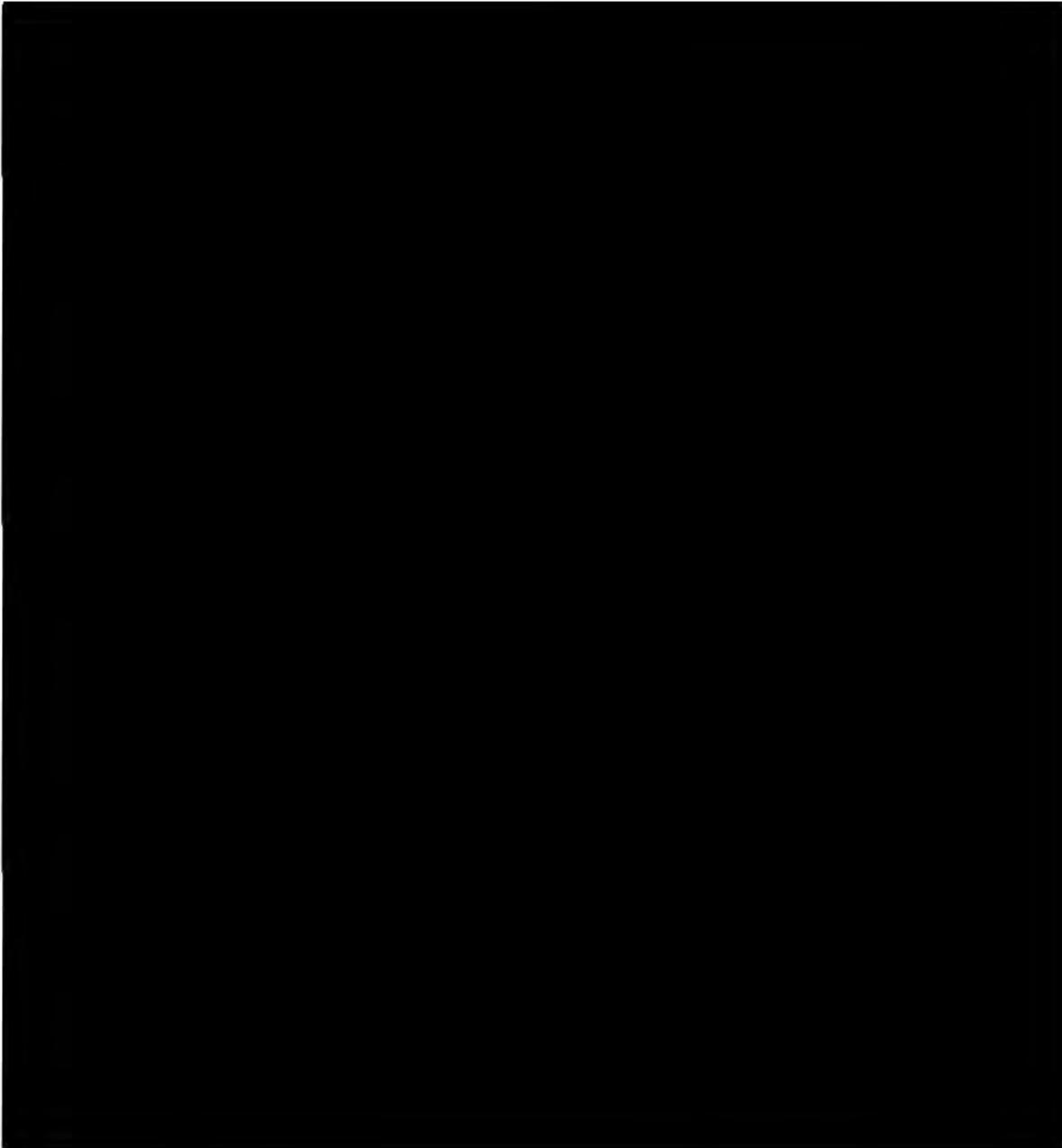
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## Annex 4 - Contract Terms and Conditions

### 1. Definitions used in the Contract

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

<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>"Charges"</b>	the charges for the Deliverables as specified in the Order Form;
<b>"Confidential Information"</b>	all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
<b>"Contract"</b>	the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form, Annexes and these Conditions;
<b>"Controller"</b>	has the meaning given to it in the GDPR;
<b>"Buyer"</b>	the person identified as such on the Order Form;
<b>"Buyer Cause"</b>	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;
<b>"Data Protection Legislation"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 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"</b>	an assessment by the Controller of the impact of the



<b>Protection Impact Assessment"</b>	envisaged processing on the protection of Personal Data;
<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 Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<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>"Deliver"</b>	means hand over the Deliverables to the Buyer as specified in the Order Form, which shall include unloading and any other specific arrangements agreed in writing. <b>"Delivered"</b> and <b>"Delivery"</b> shall be construed accordingly;
<b>"Existing IPR"</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>"Expiry Date"</b>	the date for expiry of the Contract as set out in the Order Form;
<b>"FOIA"</b>	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: 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; 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 iii) any failure of delay caused by a lack of funds;



<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"Goods"</b>	the goods to be supplied by the Supplier to the Buyer under the Contract;
<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 Data"</b>	a) 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: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<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>"Insolvency Event"</b>	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
<b>"Key Personnel"</b>	any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>"New IPR"</b>	all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>"New Supplier"</b>	another party chosen by the Buyer to take over the provision of all or part of the Services;
<b>"Order Form"</b>	the letter from the Buyer to the Supplier printed above these

	terms and conditions;
<b>"Party"</b>	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
<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>"Processor"</b>	has the meaning given to it in the GDPR;
<b>"Purchase Order Number"</b>	the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>"Request for Information"</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
<b>"Services"</b>	the services to be supplied by the Supplier to the Buyer under the Contract;
<b>"Specification"</b>	the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>"Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Subsequent Transfer Date"</b>	the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Supplier and the Buyer and/or a New Supplier (as the case may be);
<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 a Contract;



<b>"Supplier"</b>	the person named as Supplier in the Order Form;
<b>"Term"</b>	the period from the start date of the Contract set out in the Order Form to the Expiry Date, as such period may be extended in accordance with clause 11.2, or terminated in accordance with the terms and conditions of the Contract;
<b>"TUPE"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (as amended);
<b>"US-EU Privacy Shield Register"</b>	a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: <a href="https://www.privacyshield.gov/list">https://www.privacyshield.gov/list</a> ;
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Workers"</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;
<b>"Working Day"</b>	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2. Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;



- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 2.7 the word "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

### **3. How the Contract works**

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables, including the Quotation and the Specification, are and remain true and accurate.

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

#### **4.1 All Deliverables**

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.
- (b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

#### **4.2 Goods clauses**

- (a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
- (d) Risk in the Goods transfers to the Buyer on delivery, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within three Working Days of delivery.
- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.
- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.



- (i) The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- (k) 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.
- (l) The Supplier must at its own cost and as soon as possible repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they do not conform with clause 4.1 or this clause 4.2. If the Supplier does not do this it will pay the Buyer's costs including repair or re-supply by a third party.
- (m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its sub-suppliers.

#### **4.3 Services clauses**

- (a) Late delivery of the Services will be a default of the Contract.
- (b) 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 including any security requirements.
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (i) 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.
- (j) The Supplier must at its own cost and as soon as possible rectify or re-perform (at the Buyer's option and request) any Services that do not conform with

clause 4.1 or this clause 4.3. If the Supplier does not do this it will pay the Buyer's costs including repair or re-supply by a third party.

## **5. Pricing and payments**

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.2 All Charges:
- (a) exclude VAT, which is payable on provision of a valid VAT invoice;
  - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
- (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. The Supplier must ensure that any contract with a subcontractor includes a provision requiring the subcontractor to include in any subcontract which the subcontractor awards provisions having the same effect as this clause 5.7.
- 5.8 If the Supplier does not pay subcontractors in accordance with clause 5.7, the Buyer can publish the details of the late payment or non-payment.

## **6. The Buyer's obligations to the Supplier**

- 6.1 If Supplier fails to comply with the Contract solely as a result of a Buyer Cause:
- (a) the Buyer cannot terminate the Contract under clause 11;
  - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract as a direct result of the Buyer Cause;
  - (c) the Supplier is entitled to additional time needed as a direct result of the Buyer Cause to deliver the Deliverables;
  - (d) the Supplier cannot suspend the ongoing supply of Deliverables.



- 6.2 Clause 6.1 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
  - (b) demonstrates that the failure only happened because of the Buyer Cause;
  - (c) took all reasonable steps to mitigate the impact of the Buyer Cause.

## **7. Record keeping and reporting**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
  - (b) propose corrective action;
  - (c) provide a deadline for completing the corrective action.
- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
  - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

## **8. Supplier staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
  - (b) be vetted using Good Industry Practice and in accordance with the Staff Vetting Procedures;
  - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.

- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach the Contract.
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 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.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

## **9. Rights and protection**

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
  - (b) the Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) 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;
  - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
  - (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
  - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
- (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
  - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

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

- 10.1 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 and its sub-licensees to both:

- (a) receive and use the Deliverables;
- (b) use the New IPR.

- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
- 10.3 Where a Party acquires ownership of intellectual property rights 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.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "IPR Claim"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party intellectual property rights;
  - (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

## 11. Ending the contract

11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

### 11.3 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 30 days' written notice and if it's terminated clause 11.5(a)(ii) to 11.5(b)(v) applies.

### 11.4 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
  - (i) there is a Supplier Insolvency Event;
  - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the

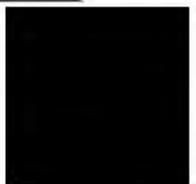
- intention or ability to give effect to the terms and conditions of the Contract;
- (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - (iv) there is a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - (v) if 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;
  - (vi) 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;
  - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(a)(ii) to 11.5(b)(v) applies.

#### **11.5 What happens if the Contract ends**

- (a) Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:
- (i) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract; and
  - (ii) the Buyer's payment obligations under the terminated Contract stop immediately.
- (b) Upon termination or expiry of the Contract for any reason the following provisions shall apply:
- (i) the accumulated rights of the Parties are not affected;
  - (ii) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
  - (iii) the Supplier must promptly return any of the Buyer's property provided under the Contract;
  - (iv) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any New Supplier and co-operate fully in the handover and re-procurement; and
  - (v) any clauses which are expressly or by implication intended to continue shall survive the termination of the Contract.

#### **11.6 When the Supplier can end the Contract**

- (a) 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 or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

- (b) If a Supplier terminates the Contract under clause 11.6(a):
  - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
  - (ii) 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;
  - (iii) clauses 11.5(b)(ii) to 11.5(b)(v) apply.

### **11.7 Partially ending and suspending the Contract**

- (a) 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.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.7, but the Supplier may not either:
  - (i) reject the variation; or
  - (ii) increase the Charges,except where the right to partial termination is under clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

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

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
  - (a) any indirect losses;
  - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 12.1, neither Party limits or excludes any of the following:
  - (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
  - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - (c) any liability that cannot be excluded or limited by law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e), 30.2(b), 34.5 or 34.6.
- 12.5 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.

- 12.6 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.

### 13. Obeying the law

- 13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
  - (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
  - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
  - (d) 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>
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.
- 13.3 The Supplier must appoint a Compliance Officer (as defined in clause 13.4) who must be responsible for ensuring that the Supplier complies with all legal provisions applicable to the Supplier, clause 13.1 and clauses 27 to 32.
- 13.4 In this clause 13 "**Compliance Officer**" means the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

### 14. Data protection

- 14.1 The Buyer is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.
- 14.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.
- 14.3 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.4 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every six Months.
- 14.5 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 requirements specified in writing by the Buyer.



- 14.6 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.
- 14.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
  - (b) restore the Government Data itself or using a third party.
- 14.8 The Supplier must pay each Party's reasonable costs of complying with clause 14.7 unless the Buyer is at fault.
- 14.9 Only the Buyer can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex 1 of the Order Form (*Authorised Processing*).
- 14.10 The Supplier must only process Personal Data if authorised to do so in the Annex to the Order Form (*Authorised Processing*) by the Buyer. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 of the Order Form.
- 14.11 The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
  - (b) the necessity and proportionality of the processing operations;
  - (c) the risks to the rights and freedoms of Data Subjects;
  - (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 14.12 The Supplier must notify the Buyer immediately if it thinks the Buyer's instructions breach the Data Protection Legislation.
- 14.13 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Buyer.
- 14.14 If lawful to notify the Buyer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 14.15 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Supplier's duties under this clause 14;
  - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
  - (c) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third Party unless directed in writing to do so by the Buyer or as otherwise allowed by the Contract;
  - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

- 14.16 The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:
- (a) it has obtained prior written consent of the Buyer;
  - (b) the Buyer has decided that there are appropriate safeguards (in accordance with Article 46 of the GDPR);
  - (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
  - (d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
  - (e) where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help the Buyer meet its own obligations under Data Protection Legislation; and
  - (f) the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.
- 14.17 The Supplier must notify the Buyer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access 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 Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
  - (f) becomes aware of a Data Loss Event.
- 14.18 Any requirement to notify under clause 14.17 includes the provision of further information to the Buyer in stages as details become available.
- 14.19 The Supplier must promptly provide the Buyer with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.17. This includes giving the Buyer:
- (a) full details and copies of the complaint, communication or request;
  - (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
  - (c) any Personal Data it holds in relation to a Data Subject on request;
  - (d) assistance that it requests following any Data Loss Event;
  - (e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.
- 14.20 The Supplier must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Buyer determines that the processing:
- (a) is not occasional;
  - (b) 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;
  - (c) is likely to result in a risk to the rights and freedoms of Data Subjects

- 14.21 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the Buyer their contact details.
- 14.22 Before allowing any Subprocessor to process any Personal Data, the Supplier must:
- (a) notify the Buyer in writing of the intended Subprocessor and processing;
  - (b) obtain the written consent of the Buyer;
  - (c) enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor;
  - (d) provide the Buyer with any information about the Subprocessor that the Buyer reasonably requires.
- 14.23 The Supplier remains fully liable for all acts or omissions of any Subprocessor.
- 14.24 At any time the Buyer can, with 30 Working Days notice to the Supplier, change this clause 14 to:
- (a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;
  - (b) ensure it complies with guidance issued by the Information Commissioner's Office.
- 14.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.
- 14.26 The Supplier:
- (a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
  - (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
  - (d) 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;
  - (e) 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:
- (a) keep all Confidential Information it receives confidential and secure;
  - (b) 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;
  - (c) 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:
- (a) 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;
- (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
  - (c) if the information was given to it by a third party without obligation of confidentiality;
  - (d) if the information was in the public domain at the time of the disclosure;
  - (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
  - (f) to its auditors or for the purposes of regulatory requirements;
  - (g) on a confidential basis, to its professional advisers on a need-to-know basis;
  - (h) 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:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - (b) 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;
  - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - (d) where requested by Parliament;
  - (e) under clauses 5.7 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 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 Contract or any part of it 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:
- (a) comply with any Freedom of Information Act (FOIA) request;
  - (b) 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 a contract**

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

## **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:
- (a) provides written notice to the other Party;
  - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 20.3 Where a Party terminates under clause 20.2:
- (a) each party must cover its own losses;
  - (b) clause 11.5(a)(ii) to 11.5(b)(v) 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:
- (a) their name;
  - (b) the scope of their appointment;
  - (c) the duration of their appointment.

## **24. Changing the contract**

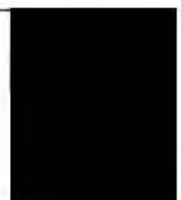
- 24.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.

## **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 or Supplier must be sent to their address in the Order 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. Preventing fraud, bribery and corruption**

- 26.1 The Supplier shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
  - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in



connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

- 26.3 If the Supplier or the Staff engages in conduct prohibited by clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
  - (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

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

- 27.1 The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
  - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 27.2 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.

## **28. Health and safety**

- 28.1 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable law regarding health and safety;
  - (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 28.2 The Supplier and the Buyer 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.

## **29. Environment**

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

## **30. Tax**

- 30.1 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.

- 30.2 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 Off Contract, the Supplier must both:
- (a) 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;
  - (b) 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.
- 30.3 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:
- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - (b) 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;
  - (c) 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 30.2 or confirms that the Worker is not complying with those requirements;
  - (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **31. Conflict of interest**

- 31.1 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 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.
- 31.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 31.3 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.

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

- 32.1 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 13.1, or clauses 26 to 31.



- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 32.1.

### **33. Resolving disputes**

- 33.1 If there is a dispute between the Parties, their senior representatives 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.
- 33.2 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 33.3 to 33.5.
- 33.3 Unless the Buyer refers the dispute to arbitration using clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the dispute;
  - (b) grant interim remedies;
  - (c) grant any other provisional or protective relief.
- 33.4 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.
- 33.5 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 33.3, 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 33.4.
- 33.6 The Supplier cannot suspend the performance of the Contract during any dispute.

### **34. TUPE**

- 34.1 The parties believe that there will be no relevant transfer for the purposes of TUPE upon commencement or cessation of the Services.
- 34.2 Notwithstanding clause 34.1, the parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services continue to be provided by the Buyer and/or a New Supplier, there may be a relevant transfer of persons employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date to the Buyer and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of such persons shall transfer to the Buyer and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.



- 34.3 The Supplier shall promptly notify the Buyer if at any time it has reason to believe that there will be a relevant transfer for the purposes of TUPE and the parties shall co-operate in agreeing a list of transferring employees prior to the Subsequent Transfer Date ("**Returning Employees**"), and shall co-operate in seeking to ensure the orderly transfer of such persons to the Buyer and/or the New Supplier.
- 34.4 The Supplier shall to the extent lawfully permitted provide the Buyer with such information that it may reasonably request from time to time for the purposes of assessing whether TUPE will or may apply, for complying with TUPE and/or in connection with the Returning Employees.
- 34.5 The Supplier shall indemnify the Buyer (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Buyer and/or a New Supplier in connection with or as a result of:
- (a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;
  - (b) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the Buyer and/or New Supplier to comply with its or their duties under regulation 13 of TUPE;
  - (c) a claim by any person who transfers or alleges that they have transferred to the Buyer or the New Supplier but whose name is not included in the list of Returning Employees.
- 34.6 If TUPE applies to transfer the employment of any person employed by the Supplier to the Buyer or any New Supplier then if the Buyer or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer, the Supplier shall indemnify the Buyer (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Buyer is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

### 35. Which law applies

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

