

# Award Form

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

1.	<b>Buyer</b>	UK Research & Innovation (UKRI) (the Buyer).  Its offices are on: Polaris House, North Star Avenue, Swindon, SN2 1FF
2.	<b>Supplier</b>	Name: <b>[Insert name (registered name if registered)]</b>  Address: <b>[Insert address registered address if registered]</b>  Registration number: <b>[Insert registration number if registered]</b>  SID4GOV ID: <b>[Insert SID4GOV ID if you have one]</b>
3.	<b>Contract</b>	This Contract between the Buyer and the Supplier is for the supply of Deliverables.  This opportunity is advertised in the Contract Notice in Find A Tender, reference <b>[Insert reference number]</b> (FTS Contract Notice).
4.	<b>Contract reference</b>	<b>PS23385</b>
5.	<b>Deliverables</b>	Legal Services for Loads See Schedule 2 (Specification) for further details.
6.	<b>Buyer Cause</b>	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.
7.	<b>Collaborative working principles</b>	The Collaborative Working Principles do not apply to this Contract. See Clause 3.1.3 for further details.
8.	<b>Financial Transparency Objectives</b>	The Financial Transparency Objectives do not apply to this Contract. See Clause 6.3 for further details.

9.	<b>Start Date</b>	January 2024
10.	<b>Expiry Date</b>	January 2025
11.	<b>Extension Period</b>	The Contract duration shall be for a period of 1 year with optional extensions of 2 additional 1 year periods from commencement of the Contract (1+1, +1).
12.	<b>Ending the Contract without a reason</b>	<p>The Buyer shall be able to terminate the Contract in accordance with Clause 14.3.</p> <p>Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be 60 days.</p>
13.	<b>Incorporated Terms</b> (together these documents form the " <b>the Contract</b> ")	<p>The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> <li>a) This Award Form</li> <li>b) Any Special Terms (see <b>Section 14 (Special Terms)</b> in this Award Form)</li> <li>c) Core Terms</li> <li>d) Schedule 1 (Definitions)</li> <li>e) Schedule 20 (Processing Data)</li> <li>f) The following Schedules (in equal order of precedence):               <ul style="list-style-type: none"> <li>a. Schedule 2 (Specification)</li> <li>b. Schedule 3 (Charges)</li> <li>c. Schedule 5 (Commercially Sensitive Information)</li> <li>d. Schedule 7 (Staff Transfer)</li> <li>e. Schedule 19 (Cyber Essentials Scheme)</li> <li>f. Schedule 21 (Variation Form)</li> <li>g. Schedule 22 (Insurance Requirements)</li> <li>h. Schedule 25 (Rectification Plan)</li> <li>i. Schedule 27 (Key Subcontractors)</li> </ul> </li> <li>g) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that aspect of the Tender will take precedence over the documents above.</li> </ul>
14.	<b>Special Terms</b>	Special Term 1 - <b>N/A</b>

<b>15.</b>	<b>Sustainability</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).
<b>16.</b>	<b>Buyer's Environmental Policy</b>	<a href="http://www.ukri.org/about-us/policies-standards-and-data/corporate-policies-and-standards/environmental-sustainability/">www.ukri.org/about-us/policies-standards-and-data/corporate-policies-and-standards/environmental-sustainability/</a>
<b>17.</b>	<b>Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports as set out in Schedule 26 (Sustainability)
<b>18.</b>	<b>Buyer's Security Policy</b>	<a href="http://www.ukri.org/publications/data-protection-policy/">www.ukri.org/publications/data-protection-policy/</a>
<b>19.</b>	<b>Commercially Sensitive Information</b>	Schedule 5 (Commercially Sensitive Information)]
<b>20.</b>	<b>Charges</b>	Details in Schedule 3 (Charges)
<b>21.</b>	<b>Reimbursable expenses</b>	None
<b>22.</b>	<b>Payment method</b>	<p>The Supplier shall submit an invoice within 28 days of supplying the Supplies and or performing Services to the satisfaction of the Buyer.</p> <p>The invoice shall show the amount of VAT payable and bear the Purchase Order number. Save where an invoice is disputed, the Buyer shall pay the Supplier within 30 days of receipt of an invoice via BACS payment.</p> <p>If you have a query regarding an outstanding payments please contact our accounts payable section either by email to <a href="mailto:finance@uksbs.co.uk">finance@uksbs.co.uk</a> or by telephone 01793-867204 between 09:00 and 17:00 Monday to Friday</p>
<b>23.</b>	<b>Service Levels</b>	Not applicable
<b>24.</b>	<b>Insurance</b>	Details in Annex of Schedule 22 (Insurance Requirements).

25.	<b>Liability</b>	[In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than [the greater of £2 million or 150% of the Estimated Yearly Charges]
26.	<b>Cyber Essentials Certification</b>	<ul style="list-style-type: none"> <li>TBC : Cyber Essentials Schemes Certificate (or equivalent).</li> </ul>
27.	<b>Progress Meetings and Progress Reports</b>	<ul style="list-style-type: none"> <li>The Supplier shall attend Progress Meetings with the Buyer every month, unless otherwise agreed.</li> <li>The Supplier shall provide the Buyer with Progress Reports every year.</li> </ul>
28.	<b>Guarantee</b>	Not applicable
29.	<b>Virtual Library</b>	Not applicable
30.	<b>Supplier Contract Manager</b>	<p><b>[Insert name]</b></p> <p><b>[Insert job title]</b></p> <p><b>[Insert email address]</b></p> <p><b>[Insert phone number]</b></p>
31.	<b>Supplier Authorised Representative</b>	<p><b>[Insert name]</b></p> <p><b>[Insert job title]</b></p> <p><b>[Insert email address]</b></p> <p><b>[Insert phone number]</b></p>
32.	<b>Supplier Compliance Officer</b>	<p><b>[Insert name]</b></p> <p><b>[Insert job title]</b></p> <p><b>[Insert email address]</b></p> <p><b>[Insert phone number]</b></p>
33.	<b>Supplier Data Protection Officer</b>	<p><b>[Insert name]</b></p> <p><b>[Insert job title]</b></p> <p><b>[Insert email address]</b></p> <p><b>[Insert phone number]</b></p>

34.	<b>Supplier Marketing Contact</b>	<p><b>[Insert name]</b></p> <p><b>[Insert job title]</b></p> <p><b>[Insert email address]</b></p> <p><b>[Insert phone number]</b></p>
35.	<b>Key Subcontractors</b>	<p><b>Key Subcontractor 1</b></p> <p>Name (Registered name if registered): <b>[insert name]</b></p> <p>Registration number (if registered): <b>[insert number]</b></p> <p>Role of Subcontractor: <b>[insert role]</b></p>
36.	<b>Buyer Authorised Representative</b>	<p><b>[Insert name]</b></p> <p><b>[Insert job title]</b></p> <p><b>[Insert email address]</b></p> <p><b>[Insert phone number]</b></p>

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

## Schedule 2 (Specification)

### Introduction

Innovation loans aim to provide flexible and patient capital to support business growth through innovation. These loans are delivered through Innovate UK Loans Ltd (IUKL), a wholly owned subsidiary of UK Research and Innovation. The loans are awarded through open competition and are available to micro, small and medium-sized businesses and can be used to fund the costs of a research & development project. A lending decision is made based on the quality of the project as well as on the suitability of the applicant for a loan. Innovation loans align with the mission of Innovate UK to broaden the range of innovation finance support available to businesses, so they can access funding at all stages of innovation. The amount of funding available to a business is dependent on the agreed parameters of the innovation loan competition however, in the most recent competitions, loans of between £100,000 and £2,000,000 have been offered to successful applicants

IUKL portfolio is expanding year on year, we currently have over 200 companies on our portfolio. Due to the increase, there is the need to access specialist legal services to meet product demand. Research carried out shows on average within one year, it is estimated Innovate UK Loans may need to access legal services approximately 20+ times per year. In addition to accessing legal advice surrounding our portfolio, changes in the macro-economic climate have created the need to source legal guidance surrounding complex cases, in particular administration cases

**Aim:** To procure legal services from a firm of lawyers that have the capacity to deal with complex financial cases due new products and services, portfolio expansion, and increase in administrations.

**Objective:** To access legal services from a firm who can provide legal advice, in particular advice associated with finance and complex legal services. It is expected that the firm would provide dedicated resource to resolve legal matters in a timely fashion, with particular focus on complex issues such as loan agreements, new products and services and insolvency cases covering multiple jurisdictions with different laws.

**Expectations:** The expectation is the legal firm would have the expertise to provide the following services, *note this list is not exhaustive*

Providing general legal advice and guidance as and when required. Work on new project launches for UKRI, review loan agreements, for example creating a new CLN product and putting together all legal documentation associated. - drafting, review of loan documentation and (where necessary) registration of security documentation. - drafting new legal documentation such as Deed of Priorities, Guarantees (both UK and abroad) and

**PS23385 Schedule 2 (Specification)**

Reservation of Rights letters. - loan restructuring related actions and documentation, for example CLN conversions. - Dispute resolution, and whether a document would stand in court and default cases. - Advice on the establishment of special purpose investment vehicles - Assurance on compliance with subsidy control regimes around the design and implementation of financial programmes for research and development funding activities - Ad hoc complex fraud cases.

**Background to the Requirement**

Innovation loans aim to provide flexible and patient capital to support business growth through innovation. The amount of funding available to an eligible business is between £100,000 and £2,000,000. The loans are awarded through open competition and are available to micro, small and medium-sized businesses to fund the costs of a research & development project.

Our portfolio continues to expand. There is the need to access specialist legal services to meet the increase in product demand. Due to the make-up of our portfolio comprising of late-stage R&D companies we now need to procure specialist legal advice focused on work surrounding financial services and agreements

**Scope**

To procure legal services from a firm of lawyers that have the capacity to deal with complex financial cases due new products and services and portfolio expansion

In scope: drafting, review of loan documentation and (where necessary) registration of security documentation. - drafting new legal documentation - registration and release of security/ charges - loan restructuring related actions and documentation - general legal advice and guidance as and when required - Advice on the establishment of special purpose investment vehicles - Assurance on compliance with subsidy control regimes around the design and implementation of financial programmes for research and development funding activities

**Terms and Conditions**

The Contract duration shall be for a period of 1 year with optional extensions of 2 additional 1 year periods from commencement of the Contract (1+1, +1).

Bidders are to note that any requested modifications to the Contracting Authority Terms and Conditions on the grounds of statutory and legal matters only, shall be raised as a formal clarification during the permitted clarification period.



PS23385 **Schedule 2 (Specification)**

## Schedule 3 (Charges)

### 1. Definitions

### 2. How Charges are calculated

#### 2.1 The Charges:

2.1.1 shall be calculated in accordance with the terms of this Schedule;

2.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and

2.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

### 3. The pricing mechanisms

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

### 4. Are costs and expenses included in the Charges

4.1 Except as expressly set out in Paragraph 5 below, or otherwise stated in the Award Form] the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

4.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or

4.1.2 costs incurred prior to the commencement of the Contract.

### 5. When the Supplier can ask to change the Charges

5.1 The Charges will be fixed for **the first two years** following the Start Date (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").

5.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.

5.3 Any notice requesting an increase shall include:

5.3.1 a list of the Charges to be reviewed;

- 5.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:

## **6. Other events that allow the Supplier to change the Charges**

- 6.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
  - 6.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8;
  - 6.1.2 a request from the Supplier, which it can make at any time, to decrease the Charges;
  - 6.1.3 indexation, where Annex 1 states that a particular Charge or any component is "subject to Indexation" in which event Paragraph 7 below shall apply; and
  - 6.1.4 verification of the Allowable Assumptions in accordance with Paragraph **Error! Reference source not found.**

## **7. When the Charges are linked to inflation]**

- 7.1 Where the Charges (Rates) are stated to be "subject to Indexation" they shall be adjusted in line with changes in the Consumer Price Index ("CPI"). All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier.
- 7.2 Charges shall not be indexed during the first two years following the Start Date.
- 7.3 Where Annex 1 states a Charge is subject to Indexation then it will be indexed on the date which is two years after the Start Date to reflect the percentage change in the CPI since the Start Date. They shall be indexed on each following yearly anniversary to reflect the percentage change in the CPI since the previous change.
- 7.4 Where the CPI Index:
  - 7.4.1 used to carry out an indexation calculation is updated (for example due to it being provisional) then the indexation calculation shall also be updated unless the Buyer and the Supplier agree otherwise;
  - 7.4.2 is no longer published, the Buyer and the Supplier shall agree a fair and reasonable replacement that will have substantially the same effect.

## **8. When you will be reimbursed for travel and subsistence**

- 8.1 Expenses shall only be recoverable where:
  - 8.1.1 the Time and Materials pricing mechanism is used; and
  - 8.1.2 the Award Form states that recovery is permitted; and

- 8.1.3 they are Reimbursable Expenses and are supported by Supporting Documentation.
- 8.2 The Buyer shall provide a copy of their current expenses policy to the Supplier upon request.

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



PS23385

**Schedule 4 (Tender)**

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## **Schedule 4 (Tender)**

***[Insert Tender Here]***

## Schedule 5 (Commercially Sensitive Information)

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

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1			
2			



## Schedule 7 (Staff Transfer)

### 1. Definitions

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

<b>“Admission Agreement”</b>	as defined in Part D;
<b>"Employee Liability"</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> <li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>(b) unfair, wrongful or constructive dismissal compensation;</li> <li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>(e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also</li> </ul>

including any payments arising in respect of pensions;

- (f) claims whether in tort, contract or statute or otherwise;

any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**“Fair Deal Employees”**

as defined in Part D;

**“Former Supplier”**

a supplier supplying the Services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);

**“New Fair Deal”**

the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the Annexes **Error! Reference source not found.-Error! Reference source not found.** inclusive to **Error! Reference source not found.** of this Schedule as notified to the Supplier by the Buyer;

**“Notified Subcontractor”**

a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

**“Old Fair Deal”**

HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for Staff pensions: Procurement of Bulk Transfer*

*Agreements and Related Issues*” issued in June 2004;

**"Partial Termination"**

the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);

**"Replacement Subcontractor"**

a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);

**"Relevant Transfer"**

a transfer of employment to which the Employment Regulations applies;

**"Relevant Transfer Date"**

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

**"Service Transfer"**

any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;

**"Service Transfer Date"**

the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

<b>"Staffing Information"</b>	in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, , all information required in <b>Error! Reference source not found.</b> ( <i>Table of Staffing Information</i> ) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in <b>Error! Reference source not found.</b> from time to time.
<b>"Statutory Schemes"</b>	means the CSPS, NHSPS or LGPS as defined in the Annexes to <b>Error! Reference source not found.</b> of this Schedule;
<b>"Supplier's Final Supplier Staff List"</b>	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Supplier's Provisional Supplier Staff List"</b>	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>"Transferring Buyer Employees"</b>	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date; and
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.
<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

## 2. Interpretation

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the

Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

**3. Which parts of this Schedule apply**

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

- 3.1 Part C (No Staff Transfer On Start Date)
- 3.2 Part E (Staff Transfer on Exit)

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

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

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.7, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, give notice to the Former Supplier; and;
  - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
  - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment;
  - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.5:

- a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to any claim:
  - 1.5.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief;
  - 1.5.2 or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the Supplier and/or Subcontractor;  
or
  - 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Start Date.
- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

## **2. Limits on the Former Supplier's obligations**

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

## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
  - 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
  - 1.1.3 the date which is 12 Months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor
  - 1.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraphs 1.1.1 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):
  - 1.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
  - 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions,



retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);

- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
- 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;
- 1.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;

- 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
  - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph **Error! Reference source not found.** of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;

- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

## **2. Staff Transfer when the contract ends**

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee
- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
  - 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
  - 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:
    - a) any collective agreement applicable to the Transferring Supplier Employees; and/or

- b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities

2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.

2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:

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

2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;

2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;

2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement

Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 any claim for:

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

2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 6 Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Subcontract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.9.1 the Supplier and/or any Subcontractor; and

2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.

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

- 2.11 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
  - 2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
    - a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
    - b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
  - 2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
  - 2.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
  - 2.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 2.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.12 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).



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**Schedule 19 (Cyber Essential Scheme)**

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**Schedule 19 (Cyber Essentials Scheme)****1. Definitions**

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

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

**2. What Certification do you need**

- 2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate prior to contract start date the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Deliverables under the Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period of the Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each

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**Schedule 19 (Cyber Essential Scheme)**

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- anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.
- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the Start date of the Contract but before the end of the Contact Period, the Supplier shall deliver to the Buyer evidence of:
- 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
  - 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for material Default.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.
- 2.6 This Schedule shall survive termination or expiry of this Contract.

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**Schedule 20 (Processing Data)**

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# **Schedule 20 (Processing Data)**

## **1. Status of the Controller**

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

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

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

1.1.3 “Joint Controller” with the other Party;

1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,

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

## **2. Where one Party is Controller and the other Party its Processor**

2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.

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

2.3 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:

2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;

2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;

2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

2.4.1 Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;

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- 2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
- a) nature of the data to be protected;
  - b) harm that might result from a Personal Data Breach;
  - c) state of technological development; and
  - d) cost of implementing any measures;
- 2.4.3 ensure that:
- a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
  - b) it uses all reasonable endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 2.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- a) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
  - b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "**IDTA**"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time, as well as any additional measures determined by the Controller;

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- c) the Data Subject has enforceable rights and effective legal remedies;
  - d) 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
  - e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 2.4.5 where the Personal Data is subject to EU GDPR, not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- a) the transfer is in accordance with Article 45 of the EU GDPR; or
  - b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
  - c) the Data Subject has enforceable rights and effective legal remedies;
  - d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
  - e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 2.4.6 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

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- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2 receives a request to rectify, block or erase any Personal Data;
  - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 2.5.6 becomes aware of a Personal Data Breach.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Personal Data Breach; and/or
  - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 2.8.1 the Controller determines that the Processing is not occasional;

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- 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
- 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
  - 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
  - 2.11.2 obtain the written consent of the Controller;
  - 2.11.3 enter into a written agreement with the Subprocessor which give effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
  - 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 2.13 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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

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

**Independent Controllers of Personal Data**

- 3.2 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

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- 3.3 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 3.4 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 3.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 3.5 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- 3.6 The Parties shall only provide Personal Data to each other:
- 3.6.1 to the extent necessary to perform their respective obligations under the Contract;
  - 3.6.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - 3.6.3 where it has recorded it in Annex 1 (*Processing Personal Data*).
- 3.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 3.8 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 3.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
- 3.9.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or



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- 3.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
- a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 3.10 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- 3.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 3.10.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 3.10.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 3.10.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 3.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
- 3.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
- 3.13 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 3.2 to 3.12 of this Schedule 20.

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**Annex 1 - Processing Personal Data**

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.
  - 1.1 The contact details of the Buyer's Data Protection Officer are: **[Insert Contact details]**
  - 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
  - 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
  - 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Relevant Authority is Controller and the Supplier is Processor. The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• The personal data of UKRI Clients/Customers and the contact details of their directors, officers, employees.</li> </ul> <p>The Parties are Independent Controllers of Personal Data for administration purposes between relevant authority and supplier</p> <ul style="list-style-type: none"> <li>• Business contact details of Supplier Personnel for which the Supplier is the Controller,</li> <li>• Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Supplier Personnel) engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller,</li> </ul>
Duration of the Processing	January 2024 - January 2027 if the full contract duration is utilised

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Nature and purposes of the Processing	To provide Finance and Highly Complex legal services to IUKL. IUKL will share information with contracted supplier of Legal services for the purposes of obtaining legal opinion on procedures such as drafting and amending loan and security agreement templates, advice on changes to loan and security documentation, advice on discussions, including enforcement, forbearance, potential disputes and pre-insolvency considerations with borrowers. The supplier will not contact customers to collect or process personal data directly from them.
Type of Personal Data	Loan applicant/recipient name, work address and email address
Categories of Data Subject	Loan applicant/recipient in respect of business contact details of directors, officers, employees
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under law to preserve that type of data	On completion of contract/end of contract the processor they will delete all personal data belonging to UKRI
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract	N/A
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract	TBC

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Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	
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## Annex 2 - Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraph 2 of this Schedule 20 (Where one Party is Controller and the other Party is Processor) and Paragraphs 3.2 - 3.12 of this Schedule 20 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the [Supplier/Buyer]:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using all reasonable endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
  - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
  - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - 1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Buyer's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### 2. Undertakings of both Parties

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

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- 2.1.1 report to the other Party every [x] months on:
- a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
  - b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
  - c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
  - d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  - e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,
- that it has received in relation to the subject matter of the Contract during that period;
- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.1a) to e);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1.1c) to e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

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- 2.1.7 use all reasonable endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
- a) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
  - b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
  - c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
- a) nature of the data to be protected;
  - b) harm that might result from a Personal Data Breach;
  - c) state of technological development; and
  - d) cost of implementing any measures;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach;
- 2.1.11 where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- a) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
  - b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement (the “**IDTA**”), or International Data Transfer Agreement Addendum to the European Commission’s SCCs (the “**Addendum**”), as published by the Information Commissioner’s Office from time to time, as well as any additional measures;
  - c) the Data Subject has enforceable rights and effective legal remedies;

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- d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
  - e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 2.1.12 where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:
- a) the transfer is in accordance with Article 45 of the EU GDPR; or
  - b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU as well as any additional measures;
  - c) the Data Subject has enforceable rights and effective legal remedies;
  - d) the transferring Party complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
  - e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.
- 2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

**3. Data Protection Breach**

- 3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are



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likely to give rise to a Personal Data Breach, providing the Buyer and its advisors with:

- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- 3.1.2 all reasonable assistance, including:
  - a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - b) co-operation with the other Party including using such reasonable endeavours as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
  - d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.
- 3.2 Each Party shall use all reasonable endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
  - 3.2.1 the nature of the Personal Data Breach;
  - 3.2.2 the nature of Personal Data affected;
  - 3.2.3 the categories and number of Data Subjects concerned;
  - 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
  - 3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
  - 3.2.6 describe the likely consequences of the Personal Data Breach.

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**4. Audit**

4.1 The Supplier shall permit:

- 4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- 4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

**5. Impact Assessments**

The Parties shall:

- 5.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- 5.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

**6. ICO Guidance**

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

**7. Liabilities for Data Protection Breach**

***[Guidance: This Paragraph represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]***

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- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
- 7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
  - 7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
  - 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (Resolving disputes).
- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):
- 7.3.1 if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;
  - 7.3.2 if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and

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

7.4 Nothing in either Paragraph 7.2 or Paragraph 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

**8. Termination**

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

**9. Sub-Processing**

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

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

**10. Data Retention**

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

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**Schedule 21 (Variation Form)**

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**Schedule 21 (Variation Form)**

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing the Contract)

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

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

**Schedule 21 (Variation Form)**

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3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

## **Schedule 22 (Insurance Requirements)**

### **1. The insurance you need to have**

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### **2. How to manage the insurance**

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

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

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

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

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

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

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

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

**6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

**7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of £1,000,000.00 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.



**PS23385 Schedule 22 (Insurance Requirements)**

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- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX: REQUIRED INSURANCES**

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

#### **1 Insured**

- 1.1 The Supplier

#### **2 Interest**

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

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

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Deliverables and in connection with this Contract.

#### **3 Limit of indemnity**

- 3.1 Not less than £1,000,000.00 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £1,000,000.00 in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

#### **4 Territorial limits**

**United Kingdom**

#### **5 Period of insurance**

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

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

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

#### **7 Principal exclusions**

- 7.1 War and related perils.
- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

**PS23385 Schedule 22 (Insurance Requirements)**

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- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

**8 Maximum deductible threshold**

- 8.1 Not to exceed £500,000.00 for each and every third party property damage claim (personal injury claims to be paid in full).

**PART B: UNITED KINGDOM COMPULSORY INSURANCES**

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

**PART C: ADDITIONAL INSURANCES**

Professional Indemnity Insurance	Where the Buyer requirement includes a potential breach of professional duty by the Supplier in connection with professional advice and /or professional services to be maintained for 6 years after the End Date £1,000,000.00

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## Schedule 25 (Rectification Plan)

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## Schedule 25 (Rectification Plan)

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

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**Schedule 25 (Rectification Plan)**

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	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

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Schedule 27 (Key Subcontractors)

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## Schedule 27 (Key Subcontractors)

### 1. Restrictions on certain subcontractors

- 1.1 The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.

**PS23385****Schedule 27 (Key Subcontractors)**

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- 1.5 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.5.1 provisions which will enable the Supplier to discharge its obligations under the Contract;
  - 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
    - a) the data protection requirements set out in Clause 18 (Data protection);
    - b) the FOIA and other access request requirements set out in Clause 20 (When you can share information);
    - c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 (When the Buyer can end this contract) and 14.5 (What happens if the contract ends) of this Contract;
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
  - 1.5.8 a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 13 (Step-in rights).
- 1.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

# **Core Terms – Mid-tier**



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## 1. Definitions used in the contract

Interpret this Contract using Schedule 1 (Definitions).

## 2. How the contract works

- 2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
  - 2.1.1 make changes to the Award Form;
  - 2.1.2 create new Schedules;
  - 2.1.3 exclude optional template Schedules; and
  - 2.1.4 use Special Terms in the Award Form to add or change terms.
- 2.2 The Contract:
  - 2.2.1 is between the Supplier and the Buyer; and
  - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
  - 2.4.1 the Buyer's requirements for the Deliverables;
  - 2.4.2 the Buyer's operating processes and working methods; and
  - 2.4.3 the ownership and fitness for purpose of the Buyer Assets,
 and it has advised the Buyer in writing of:
  - 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
  - 2.4.5 the actions needed to remedy each such unsuitable aspect; and
  - 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,
 and such actions, timetable and costs are fully reflected in this Contract.

- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
  - 2.5.1 verify the accuracy of the Due Diligence Information; and
  - 2.5.2 properly perform its own adequate checks.
- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### 3. What needs to be delivered

#### 3.1 All deliverables

- 3.1.1 The Supplier must provide Deliverables:
  - a) that comply with the Specification, the Tender Response and the Contract;
  - b) using reasonable skill and care;
  - c) using Good Industry Practice;
  - d) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
  - e) on the dates agreed; and
  - f) that comply with Law.
- 3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.
- 3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:
  - a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
  - b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
  - c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;

- d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

### 3.2 Goods clauses

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

### 3.3 Services clauses

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

## 4. Pricing and payments

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2 All Charges:
  - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer; and
  - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.

- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

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

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

## 6. Record keeping and reporting

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for 7 years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
  - 6.3.1 on or before the Start Date;
  - 6.3.2 at the end of each Contract Year; and
  - 6.3.3 within 6 Months of the end of the Contract Period,

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

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

6.4.1 Supplier's currently incurred or forecast future Costs; and

6.4.2 forecast Charges for the remainder of the Contract,

then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.

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

6.5.1 complies with the Supplier's operating procedures; and

6.5.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.

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

6.6.1 all information within the permitted scope of the Audit;

6.6.2 any Sites, equipment and the Supplier's ICT system used in the performance of the Contract; and

6.6.3 the Supplier Staff.

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

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

6.8.1 correcting any identified Default;

6.8.2 rectifying any error identified in a Financial Report; and

6.8.3 repaying any Charges that the Buyer has overpaid.

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

6.9.1 tell the Buyer and give reasons;

6.9.2 propose corrective action; and

6.9.3 provide a deadline for completing the corrective action.

- 6.10 Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an



Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

## 7. Supplier staff

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

## 8. Supply chain

### 8.1 Appointing Subcontractors

- 8.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:
  - a) manage Subcontractors in accordance with Good Industry Practice;
  - b) comply with its obligations under this Contract; and
  - c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

### 8.2 Mandatory provisions in Sub-Contracts

- 8.2.1 The Supplier will ensure that all Sub-Contracts in the Supplier's supply chain entered into after the Effective Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:
  - a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;

- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

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

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

### 8.3 When Sub-Contracts can be ended

8.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

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

### 8.4 Competitive terms

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

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

## 8.5 Ongoing responsibility of the Supplier

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

## 9. Rights and protection

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

- 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## 10. Intellectual Property Rights (IPRs)

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

## 11. Rectifying issues

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

- 11.3.2 may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

## 12. Escalating issues

- 12.1 If the Supplier fails to:

12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and

12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.

- 12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

- 12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clause 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

## 13. Step-in rights

- 13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:

13.1.1 whether it will be taking action itself or with the assistance of a third party;

13.1.2 what Required Action the Buyer will take during the Step-In Process;

13.1.3 when the Required Action will begin and how long it will continue for;

13.1.4 whether the Buyer will require access to the Sites; and

13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.

- 13.2 For as long as the Required Action is taking place:

13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;

- 13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
- 13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within 20 Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.
- 13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
  - 13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
  - 13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

## 14. Ending the contract

- 14.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.
- 14.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.
- 14.3 **Ending the contract without a reason**  
 The Buyer has the right to terminate the Contract at any time without reason or (unless the Award Form states something different) liability by giving the Supplier not less than 90 days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clauses 14.5.1b) to 14.5.1h) applies.
- 14.4 **When the Buyer can end the Contract**
  - 14.4.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:
    - a) there's a Supplier Insolvency Event;
    - b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance

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

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

14.4.3 If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clauses 14.5.1b) to 14.5.1h) applies.

#### 14.5 What happens if the contract ends

14.5.1 Where the Buyer terminates the Contract under Clauses 14.4.1 and 9.5, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where

applicable) or Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable). all of the following apply:

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

14.5.2 If either Party terminates the Contract under Clause 24.3:

- a) each party must cover its own Losses; and
- b) Clauses 14.5.1b) to 14.5.1h) applies.

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

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

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

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

- a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value



- of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
- c) Clauses 14.5.1d) to 14.5.1h) apply.

#### 14.7 Partially ending and suspending the contract

- 14.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- 14.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of the Contract can still be used to effectively deliver the intended purpose.
- 14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:
- a) reject the Variation; or
  - b) increase the Charges, except where the right to partial termination is under Clause 14.3.
- 14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

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

- 15.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.
- 15.2 Neither Party is liable to the other for:
- 15.2.1 any indirect Losses; and
  - 15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:
- 15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
  - 15.3.3 any liability that cannot be excluded or limited by Law.
- 15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 9.3, **Error! Reference source not found.**, 16.3 or Schedule 7 (Staff Transfer) of the Contract.

- 15.5 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.6 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 15.7 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
  - 15.7.1 Deductions; and
  - 15.7.2 any items specified in Clause 15.4.
- 15.8 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## 16. Obeying the law

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2 The Supplier shall comply with the provisions of:
  - 16.2.1 the Official Secrets Acts 1911 to 1989; and
  - 16.2.2 section 182 of the Finance Act 1989.
- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.
- 16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

## 17. Insurance

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

## 18. Data protection

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

- 18.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
  - 18.6.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
  - 18.6.2 restore the Government Data itself or using a third party.
- 18.7 The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is entirely at fault.
- 18.8 The Supplier:
  - 18.8.1 must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
  - 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
  - 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and
  - 18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

## 19. What you must keep confidential

- 19.1 Each Party must:
  - 19.1.1 keep all Confidential Information it receives confidential and secure;
  - 19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
  - 19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

- 19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
- 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - 19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
  - 19.2.3 if the information was given to it by a third party without obligation of confidentiality;
  - 19.2.4 if the information was in the public domain at the time of the disclosure;
  - 19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
  - 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
  - 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
  - 19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 19.4.2 on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 19.4.4 where requested by Parliament; and
  - 19.4.5 under Clauses 4.6 and 20.
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.

- 19.6 Transparency Information and any Information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

## 20. When you can share information

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

## 21. Invalid parts of the contract

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

30 Working Days of the matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.

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

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

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

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

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

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

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

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

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

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

## 27. Transferring responsibilities

- 27.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.
- 27.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- 27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 27.2.3 the proposed Subcontractor employs unfit persons
- 27.3 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 27.5 The Supplier can terminate the Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.
- 27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- 27.7.1 their name;
  - 27.7.2 the scope of their appointment;
  - 27.7.3 the duration of their appointment; and
  - 27.7.4 a copy of the Sub-Contract.

## 28. Changing the contract

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



## 29. How to communicate about the contract

- 29.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9am on the first Working Day after sending unless an error message is received.
- 29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 29.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## 30. Dealing with claims

- 30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 30.2 At the Indemnifier's cost the Beneficiary must both:
  - 30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
  - 30.2.2 give the Indemnifier reasonable assistance with the claim if requested.
- 30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
- 30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
  - 30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
  - 30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

## 31. Preventing fraud, bribery and corruption

- 31.1 The Supplier must not during the Contract Period:
- 31.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
  - 31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 31.2 The Supplier must during the Contract Period:
- 31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
  - 31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
  - 31.2.3 if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 31.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:
- 31.3.1 been investigated or prosecuted for an alleged Prohibited Act;
  - 31.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 31.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Contract; and
  - 31.3.4 suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act.
- 31.4 If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 31.5 If the Supplier is in Default under Clause 31.1 the Buyer may:
- 31.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and

31.5.2 immediately terminate this agreement.

31.6 In any notice the Supplier gives under Clause 31.4 it must specify the:

31.6.1 Prohibited Act;

31.6.2 identity of the Party who it thinks has committed the Prohibited Act;  
 and

31.6.3 action it has decided to take.

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

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

32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

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

## **33. Health and safety**

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

33.1.1 all applicable Law regarding health and safety; and

33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

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

## **34. Environment**

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

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

## 35. Tax

- 35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 35.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:
  - 35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
  - 35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
  - 35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
  - 35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 35.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
  - 35.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - 35.4.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;

- 35.4.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and
- 35.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## **36. Conflict of interest**

- 36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

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

- 37.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:
  - 37.1.1 Law;
  - 37.1.2 Clause 16.1; and
  - 37.1.3 Clauses 31 to 36.
- 37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 37.1 to the Buyer or a Prescribed Person.

## **38. Further Assurances**

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

## **39. Resolving disputes**

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

- 39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.3 to 39.5.
- 39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 39.3.1 determine the Dispute;
  - 39.3.2 grant interim remedies; and
  - 39.3.3 grant any other provisional or protective relief.
- 39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.4.
- 39.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

## 40. Which law applies

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