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**SHORT FORM CONTRACT FOR THE SUPPLY OF SERVICES**

**I. Order Form**

|  |  |
| --- | --- |
| **1. Contract** **Reference** | *IPA305* |
| **2. Buyer**  | **Infrastructure and Projects Authority** of 1 Horse Guards Road, London, SW1A 2HQ |
| **3. Supplier**  | **Local Partnerships LLP** incorporated and registered in England and Wales with company number OC346845 whose registered address is at 18 Smith Square, London, SW1P 3HZ |
| **4. The Contract**  | This Contract between the Buyer and the Supplier is for the supply of Deliverables. The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("**Conditions**") and **Annexes**. Unless the context otherwise requires, capitalised expressions used in this Order Form and Call Off Order have the same meanings as in the Conditions.  |
| **5. Deliverables**  | **Services**  | The Services set out in each Call Off Order and delivered in accordance with the Call Off Order, the Specification and the Conditions.  |
| **6. Specification**  | The specification of the Deliverables is as set in Annex 2.  |
| **7. Start Date**  | 16TH January 2023 |
| **8. Expiry Date**  | 15th January 2024 |
| **9. Extension** **Period** | The Buyer may extend the Contract for a period of up to 2 x 12 Months by giving not less than 10 Working Days’ notice in writing to the Supplier prior to the Expiry Date. The Conditions of the Contract shall apply throughout any such extended period. |
| **10. Optional** **Intellectual** **Property** **Rights** **(“IPR”)** **Clauses** | Clause 10 has been deleted and replaced with the clauses set out in Part A of Annex 5 – Optional IPR Clauses. |

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| **11. Charges**  | The Charges for the Deliverables shall be as set out in Annex 3 – Charges and in each Call Off Order.  |
| **12. Payment**  | Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier. All invoices must be sent, quoting a valid Purchase Order Number (PO Number), to: ipa.business-services@ipa.gov.uk, Infrastructure and Projects Authority, 1 Horse Guards Road, London, SW1A 2HQ and copied to Redacted under FOIA Section 40 Personal Information of your countersigned copy of this Order Form or a Call Off Order, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice. cTo avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, a Call Off Order Number, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may be sent back to you, which may lead to a delay in payment. Payments will be made to the Supplier by: Bankers’ Automated Clearing System (BACS). If you have a query regarding an outstanding payment please contact our Accounts Payable team by email at: **APinvoices-CAB u@gov.sscl.com**. |
| **13. Data** **Protection** **Liability Cap** | In accordance with clause 12.6 of the Conditions, the Supplier’s total aggregate liability under clause 14.8(e) of the Conditions is no more than the Data Protection Liability Cap, being £750,000. |
| **14. Progress** **Meetings and** **Progress** **Reports** | ● The Supplier shall attend progress meetings with the Buyer as reasonably required by the Buyer throughout the Term. ● The Supplier shall provide the Buyer with progress reports every 6 months in each calendar year throughout the Term in a format as reasonably requested by the Buyer. |
| **15. Buyer** **Authorised** **Representati** **ve(s)**  | For general liaison your contact will continue to be Redacted under FOIA Section 40 Personal Information |

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|  | or, in their absence, Redacted under FOIA Section 40 Personal Information |
| **16. Supplier** **Authorised** **Representati** **ve(s)**  | For general liaison your contact will continue to be Redacted under FOIA Section 40 Personal Information |
| **17. Address for notices** | **Buyer: Supplier:** Infrastructure and Projects Local Partnerships LLP, 18 Smith Authority, 1 Horse Guards Square, London, SW1P 3HZ Road, London, SW1A 2HQ Redacted under FOIA Section 40 Personal Information |
| **18. Key Staff**  | **Key Staff** Redacted under FOIA Section 40 Personal Information |

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| **19. Procedures** **and Policies** | For the purposes of the Contract the: The Buyer’s Staff Vetting Procedures are: • The Buyer requires the Supplier to ensure that any person employed in the Delivery of the Deliverables has: o at least Baseline Personnel Security Standard (BPSS) clearance as set out in the Cabinet Office HMG Baseline Personnel Security Standard Guidance available at Government baseline personnel security standard - GOV.UK (www.gov.uk) as it is replaced or amended from time to time. o undertaken a disclosure and barring service check. ▪ Details of what the Buyer considers to be a Relevant Conviction for the purposes of clause 8.7 of the Conditions. Other policies that apply are: • The Buyer’s security / data security requirements are: Cyber Essential Certification set out in the Procurement Policy Note – Cyber Essentials Scheme available at Microsoft Word - PPN Update Cyber Essentials 0914.docx (publishing.service.gov.uk) as may be replaced or updated from time to time. • The Supplier’s health and safety policy. • The Buyer’s and/or the Beneficiary’s health and safety policy as provided to the Supplier from time to time.  |

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| **20. Special** **Terms**  | Relevant changes have been reflected directly in the Order Form and the Conditions.  |
| **21. Incorporated** **/terms**  | The following documents are incorporated into the Contract. If there is any conflict, the following order of precedence applies: a) This Order Form; b) Any Special Terms reflected directly in the Order Form; c) Conditions as amended (and as they may be amended by Annex 5 – Optional IPR Clauses) d) The following Annexes in equal order of precedence: i. Annex 1 – Processing Personal Data ii. Annex 2 – Specification iii. Annex 3 – Charges e) Annex 4 – Call Off Order The following documents are incorporated into a Call Off Contract: a) the Call Off Order between (i) the Buyer and (ii) the Supplier which is created by the Buyer counter signing and dating the Call Off Order b) the Contract. If there is any conflict, the following order of precedence applies: a) the Call Off Order b) the Contract.  |

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| Signed for and on behalf of the **Supplier**  | Signed for and on behalf of the **Buyer** |

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| --- | --- |
| Redacted under FOIA Section 40 Personal Information | Redacted under FOIA Section 40 Personal Information |
| Date: 25/01/2023 | Date: 25/01/2023 |
| Signature: Redacted under FOIA Section 40 Personal Information | Signature: Redacted under FOIA Section 40 Personal Information |

**II. Annex 1 – Processing Personal Data**

**A. Part A - Authorised Processing Template**

|  |  |
| --- | --- |
| **Contract:**  |  |
| **Short Form Contract for the Supply of Services** |
| **Date:**  | **The date of the Order Form signed by the Buyer** |
| **Description of authorised processing** | **Details** |
| Identity of Controller and Processor for each category of Personal Data | The Buyer is the Controller and the Supplier is the Processor.  |
|  | Subject matter of the processing The subject matter of the processing is commissioning of the Deliverables, provision of the Deliverables, and all other associated tasks related to provision of the Deliverables.  |
| Duration of the processing  | For the duration of this Order Form and for the duration of each Call Off Contract.  |
| Nature and purposes of the processing | The processing is necessary for: a. performance of a contract b. compliance with legal obligations c. the legitimate interests of the data controller.  |
| Type of Personal Data  | Names, Email Addresses, Telephone Numbers |

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| Categories of Data Subject  | The Buyer’s staff, the Supplier’s staff, and the staff of any third parties including Beneficiaries of the Deliverables, staff of special purpose vehicles/project companies, contractors, sub-contractors, insurers, insurance brokersand/or advisers of any of the aforementioned. |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data | All Personal Data must be deleted and/or returned to the Buyer (as applicable) at the expiry or termination of the Order Form and/or each Call Off Contract (as applicable). .   |
| Locations at which the Supplier and/or its Subcontractors process Personal Data under this Contract | In the United Kingdom.   |
| Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect Personal Data processed under this Contract against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach | The Supplier shall provide evidence to the Buyer of their Cyber Essentials Certificate within 30 days of the Start Date and in advance of providing any Deliverables under this Contract or a Call Off Contract. The Supplier shall maintain the Cyber Essentials Certification throughout the Term.     |

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**III. Annex 2 – Specification**

The Supplier shall comply with the terms of the Specification in respect of all the Deliverables that it provides under the Contract and each Call Off Contract.

Specification

1. IPA requires commercial & technical advisers to support the delivery of the programme. The key area of support is envisaged to be expert advice to contracting authorities on their specific PFI issues. Other programme level support may also be required.

2. The potential types of support services required are set out in the Scope of Requirement section below.

3. Actual requirements will be called off on a case by case basis. The call offs for each assignment or piece of work should set out:

● The scope of requirement

○ Scope of Works

○ Background;

○ Objectives and Scope

○ Specific Outputs/ Deliverables

○ Details of Departmental or Contracting Authority Assistance

● The deliverables & timings; and

● Cost.

4. The potential areas of support are set out in the tables below. This list is not exhaustive and other support to the programme may be required.

|  |  |  |
| --- | --- | --- |
|  | **Support Requirement** |  |
|  | Managing the Exit of PFI Projects |
| 1  | Expiry Health Checks  | To work with an IPA project director (IPA Lead) to prepare for and undertake an agreed set of Expiry Health Checks (EHCs). For each EHC the scope will include: ● Review information provided by the Authority and the IPA and other relevant public information, such as Companies House accounts, to develop a detailed understanding of the project and contract before the review session. ● Work with the IPA Lead to agree the key areas for enquiry during the EHC review session and to take an active role  |

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|  |  | in the EHC review with the contracting authority, including leading and supporting the discussion and taking notes. ● Consider the outcome of the EHC review with the IPA Lead, including follow-ups with the Authority if required. ● Populate, review and agree the EHC tool with the IPA Lead. ● Draft the EHC report, including making revisions as agreed with the IPA Lead or the IPA QA and moderation process. ● Attend by video link, if required, the IPA moderation session (c. 1 hour). Key deliverables: ● Populated EHC tool ● EHC report It is assumed that an EHC will require no more than 6 days of time. If an EHC requires more than 6 days work, this should be discussed with the IPA Lead. A full draft of each EHC report shall be prepared and agreed within 6 business days of the EHC interview or as otherwise agreed with the IPA Lead.  |
| 2  | Setting up for Success  | Contribute, as required, to the development of a standard support offer/approach to set up projects for expiry success. Deploy “Setting up for Success” assistance & tools to projects following Expiry Health Checks. Note: the Setting up for Success process and scope is currently being developed but is anticipated to involve the provision of up to 15 days of commercial and technical support to individual contracting authorities following an Expiry Health Check. There will be a standard process and set of tools to follow.  |
| 3  | Expiry Related Toolkits  | Additional ‘how to’ tools, guides, templates, best practice examples and case studies as part of the Expiry Guidance suite, to support authorities in managing expiry. It is intended that this toolkit will be added to over time to reflect the growing expiry experience in the market and so provide a practical reference base that stays relevant as this experience develops.  |
| 4  | Asset Related Advice  | Provide technical, legal and commercial advice in relation to the condition and handback of assets, including: ● Asset condition surveys; ● Assessments as to whether asset condition meets contractual standards; ● Assessment of rectification works and costs; |

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|  |  | ● Lifecycle arrangements and adequacy of funding; ● Variations; ● Negotiation and documentation support in relation to asset related expiry issues, including the above. |
| 5  | Commercial Support  | Advice to contracting authorities to manage the exit process, support asset handback and continuity of service, including: ● Advice on specific expiry provisions within contracts; ● Develop expiry plans ● Develop commercial strategies and support negotiations with contractors |
| 6  | Transition to Future Services | Advice to contracting authorities to determine and implement their preferred approach to service delivery post expiry.  |
| 7  | Carbon Net Zero  | IPA wishes to use a net zero market standard approach for PFI projects as a basis for related policy & guidance. Support may be required in developing a standard approach and/or contributing to guidance. |
|  | **Improving Operational Performance** |
| 8  | Operational Contract Reviews & Implementation | Assess the performance of a specific PFI contract and recommend ways to improve their operational efficiency by undertaking a contract review, either a full deep dive or of targeted areas. Support implementation of savings/efficiencies recommendations |
| 9  | Operational Performance Health Checks | Support IPA to carry out a number of Operational Performance Health Checks’ (OPHCs) in respect of the PFI contracts held by public sector authorities. The OPHCs will assess the operational performance of the services and the management of the contract. Local Partnerships will provide the following deliverables for each Health Check: ● Populated Health Check tool with provisional scoring and notes ● Summary report |

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| 10  | Contract management toolkits  | IPA will be developing contract management support tools to assist contracting authorities improve the management and performance of their PFI contracts. Support may be required in that development and in the subsequent deployment of the tools. |
| 11  | Contract Management Guidance | Support the development of Contract Management Guidance and provide Case Studies |
|  | **Building Capability** |
| 12  | Training Delivery  | Facilitator of Expiry training courses (and other PFI Contract Management Courses once they are developed) working (in most cases) alongside a Learning & Development Facilitator and/ or an IPA member of staff. |
| 13  | Technical Notes  | Provide advice and case studies to IPA in the development of technical notes & guidance on PFI thematic issues. |
| 14  | Specialist Training (International delivery) | Support the delivery of the IPA’s international capability workstream, through support to training content and providing specialised trainers for delivery alongside an IPA member of staff. |
|  | **Advice & Support**  |
| 15  | Contract Management  | Support in all aspects of Contract Management including ● Application of the payment mechanism ● Performance Monitoring ● Help desk audits ● Compliance/statutory maintenance ● Governance ● Relationship building ● Contract interpretation of key commercial terms ● Event of Default/Termination scenarios  |
| 16  | Benchmarking & Market Testing | Support PFI projects to obtain value for money at the periodic contractual value testing dates: ● Develop a Value Testing Strategy, including timetable & action plan ● Provide benchmark data ● Develop a Should Cost Model ● Review contractor’s Value Testing report ● Support negotiations with contractor |
| 17  | Service Performance & Turnaround | Reviews of hard and soft facilities management which can assess whether: ● Services are being performed to contractual standards: ● Poor performance is being addressed; |

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|  |  | ● To rectify failures and levy contractual deductions ● The service specification needs to be updated for changing user requirements ● Savings can be made by removing services or by altering specifications and / or performance levels energy savings can be made in price and / or volume terms Advice & support to contracting authorities to actively manage service performance turnaround |
| 18  | Variations  | Support to contracting authorities in scoping, negotiating and implementing contractual variations. |
| 19  | Refinancing, Restructuring and Terminations | ● Refinancing ● Restructuring proposals ● Assessment of termination options including contractor default, authority default and voluntary termination ● Options Analysis ● Business case support, if required ● Implementation  |
| 20  | Insurance  | Advice about managing PFI contract insurance arrangements including the interpretation of insurance contract provisions and insurance premium risk sharing. |
| 21  | Disputes  | Supporting contractual disputes, developing commercial strategy and negotiation support. |
| 22  | Other discrete interventions | eg energy/utility mechanisms. lifecycle sufficiency, financial reviews, business cases |

Note: Local Partnerships may subcontract some of the work where it does not have the skills or the capacity, for example asset condition surveys pursuant to a Call Off Contract. Any sub-contracting is subject to clause 25 and is to be documented in writing as required by the Buyer (acting reasonably).

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**Example Call-off**

Redacted under FOIA Section 43 Commercial Interests

**Background**

Redacted under FOIA Section 43 Commercial Interests

**Scope of Requirements**

Redacted under FOIA Section 43 Commercial Interests

**Key risks to consider**

Redacted under FOIA Section 43 Commercial Interests

**Key activities**

Redacted under FOIA Section 43 Commercial Interests

**Tasks**

Redacted under FOIA Section 43 Commercial Interests

**Deliverables**

 Redacted under FOIA Section 43 Commercial Interests

2excluding VAT and reasonable expenses

**IV. Annex 3 – Charges**

1. The Supplier’s daily rate calculated based Redacted under FOIA Section 43 Commercial Interests

plus VAT and expenses approved in advance and in writing by the Buyer’s project director.

2. Prior to each extension of the Contract pursuant to clause 11.2, the Buyer shall review the Daily Rate and may adjust the Daily Rate to reflect increases or decreases in the cost of services indicated by the percentage increase or decrease in the Consumer Prices Index during the previous year. Any increase or decrease of the Daily Rate shall be final and shall apply from the date that it is notified in writing to the Supplier.

3. The Supplier shall use the Daily Rate in respect of all quotes it provides to the Buyer for Call Off Orders under the Contract and for all Call Off Contracts it enters into with the Buyer.

4. The Supplier shall obtain prior written approval from the Buyer’s project director for all expenses in respect of all Call Off Contracts. All expenses claimed must adhere to the Cabinet Office expenses policy rules and limits. A copy of the Cabinet Office expenses policy can be provided upon request.

5. The Supplies acknowledges and accepts that:

5.1.in entering into this Contract, the Buyer does not guarantee any spend under this Contract.

5.2.where the Buyer elects at its sole discretion to utilise this Contract to enter into Call Off Contracts, it shall not spend more than £750,000 per year (£2,250,000 over the maximum 3 year period including extensions) throughout the Term.

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**V. Annex 4 – Call Off Order**

**Short Form Contract for the Supply of Services**

|  |  |
| --- | --- |
| **Call Off Order Number**  | [INSERT CALL OFF ORDER NUMBER] |
| **Parties**  | (1) Infrastructure and Projects Authority (**Buyer**) (2) Local Partnerships LLP (Supplier) |
| **Beneficiary**  | [INSERT NAME OF BENEFICIARY / ADDRESS / AUTHORISED REPRESENTATIVE] |
| **Contract**  | Short Form Contract for the Supply of Services dated [DATE] (**Contract**) |
| **Start Date**  | [INSERT START DATE] |
| **Expiry Date**  | [INSERT EXPIRY DATE] |
| **Extension**  | The Buyer may extend this Call Off Order for such period or periods as notified in writing to the Supplier. Any such extension period or periods may exceed the Term of the Contract but will be on the same terms as set out in this Call Off Order and those contained in the Contract. If the Buyer wishes to extend this Call Off Order, it shall give the Supplier at least 14 days’ written notice before the Expiry Date.  |
| **Description of the Deliverables**  | The Supplier shall deliver the following Deliverables for the benefit of the Buyer and the Beneficiary: [SELECT WHICH WORK STREAM APPLIES, THE RELEVANT SUPPORT REQUIRED WITHIN THAT WORKSTREAM AND OUTLINE THE SERVICES REQUIRED FOR THAT. DELETE THE WORK STREAMS AND SUPPORT REQUIREMENTS THAT DO NOT APPLY] |
| **Managing the Exit of PFI Projects**  |
| 1. Expiry Health Checks  |  |
| 2. Setting up for Success |  |
| 3. Expiry Related Toolkits  |  |
| 4. Asset Related Advice  |  |
| 5. Commercial Support  |  |

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|  | 6. Transition to Future Services  |  |
| 7. Carbon Net Zero  |  |
| **Improving Operational Performance**  |
| 1. Operational Contract Reviews & Implementation  |  |
| 2.Operational Performance Health Checks  |  |
| 3. Contract Management Toolkits  |  |
| 4. Contract Management Guidance  |  |
| **Building Capability**  |
| 1. Training Delivery  |  |
| 2. Technical Notes  |  |
| 3. Specialist Training (International delivery)  |  |
| **Advice & Support**  |
| 1. Contract Management  |  |
| 2. Benchmarking & Market Testing  |  |
| 3. Service Performance & Turnaround  |  |
| 4. Variations  |  |
| 5. Refinancing, Restructuring and Terminations |  |
| 6. Insurance  |  |
| 7. Disputes  |  |
| 8. Other discrete interventions  |  |
| The detailed requirements of the Deliverables as set out in Annex 2 (Specification) of the Contract apply to this Call Off Order. |

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| **Key Staff**  | The Key Staff for this Call Off Order are as stated in the Contract. [**OR]** [The Key Staff for this Call Off Order are as follows: [INSERT DETAILS]  |
| **Contact details**  | **Buyer: [**ENTER DETAILS] **Supplier:** [ENTER DETAILS] **Beneficiary:** [ENTER DETAILS] |
| **Charges**  | The Charges that apply to this Call Off Order are: [NUMBER OF DAYS] x **Daily Rate** = [TOTAL] plus VAT and expenses (if applicable) The expenses for this Call Off Order are: [INSERT DETAILS] OR [None].  |
| **Reporting and contract** **management** | The reporting requirements and contract management obligations that apply to this Call Off Order are as set out in the Contract.  |
| **Confidential** **Information**  | The following is Confidential Information: [INSERT DETAILS] OR The Parties shall comply with their respective obligations in respect of confidentiality and Confidential Information as set out in the Contract.  |
| **Sub-contracting arrangements** | None. [OR] The Buyer permits the Supplier to appoint the following Sub Contractor to carry out [DESCRIPTION OF THE WORKS] subject to the following terms: [INSERT DETAILS].  |

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|  | The Supplier shall at all times comply with clauses 25.2 to 25.8 of the Contract.  |

**BY SIGNING AND RETURNING THIS CALL OFF ORDER THE SUPPLIER AGREES** to enter into a legally binding contract with the Buyer to provide to the Buyer the Deliverables specified in this Call Off Order incorporating the Contract entered into by the Buyer and the Supplier on [DATE]. This Call Off Order shall constitute a Call Off Contract and shall come into effect when signed and dated by the Buyer.

**For and on behalf of the Supplier:**

|  |  |
| --- | --- |
| **Signature:** |  |
| **Name and Job Title of Authorised Signatory:**  |  |
| **Date:** |  |

**For and on behalf of the Buyer:**

|  |  |
| --- | --- |
| **Signature:** |  |
| **Name and Job Title of Authorised Signatory:**  |  |
| **Date:** |  |

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**VI. Annex 5 – Optional IPR Clauses**

**A. Part A: Buyer ownership with limited Supplier rights to exploit New IPR for the purposes of the current Contract**

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

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

(a) receive and use the Deliverables; and

(b) use the New IPR.

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

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

Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.

If any claim is made against the Buyer and/or a Beneficiary for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer and each Beneficiary against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

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

(a) obtain for the Buyer the rights in clauses 10.1 and 10.2 without infringing any third party intellectual property rights; and

(b) replace or modify the relevant item with substitutes that don’t infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless it has notified the Buyer that the owner or an authorised licensor of the relevant Third Party IPR will grant a direct licence to the Buyer for the Third Party IPR and that licence has been granted. The Buyer, in its absolute discretion, shall have 10 Working Days following the Supplier’s notification to reject the grant of the licence. If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party IPR, for whatever reason, the Supplier shall:

(a) notify the Buyer in writing; and

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

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

Subject to clause 10.11, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items and the Supplier warrants that the New IPR Items are suitable for release under Open Licence.

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

The Supplier may within 15 days of a Buyer Open Licence Request under clause 10.10 request in writing that the Buyer excludes all or part of:

(a) the New IPR; or

(b) Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to clause 10.10

from Open Licence publication.

Any decision to approve any such request from the Supplier pursuant to clause 10.11 shall be at the Buyer’s sole discretion, not to be unreasonably withheld, delayed or conditioned.

Subject to clause 12, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.

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**VII. Short form Terms (“Conditions”)**

**1. Definitions used in the Contract**

In this Contract and/or each Call Off Contract, unless the context otherwise requires, the following words shall have the following meanings:

|  |  |
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| **“Affiliates”**  | in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **“Audit”**  | the Buyer’s right to: (a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract and/or each Call Off Contract (including proposed or actual variations to them in accordance with the Contract and/or a Call Off Contract); (b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables; (c) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law; (d) identify or investigate actual or suspected breach of clauses 4 to 35, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations; (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables; (f) obtain such information as is necessary to fulfil the Buyer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract and/or each Call Off Contract; (h) carry out the Buyer’s internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts; |

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|  | (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources; |
| **“Beneficiary”**  | A contracting authority with one or more private finance initiative contracts nominated by the Buyer to benefit from the Deliverables pursuant to a Call Off Contract; |
| **"Buyer"**  | the person named as Buyer in the Order Form and each Call Off Contract. Where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole; |
| **"Buyer Cause"**  | any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and/or each Call Off Contract and in respect of which the Buyer is liable to the Supplier; |
| **Call Off Order**  | a document setting out details of a Call Off Order in the form set out in Annex 4 of the Contract or as otherwise agreed in writing between the Parties;  |
| **Call Off Contract**  | each contract entered into using the Call Off Order between (i) the Buyer and (ii) the Supplier which is created by the Buyer counter signing and dating the Call Off Order and incorporating the Contract; |
| **Call Off Order Number**  | the call off order number stated in the Call Off Order for each Call Off Contract;  |
| **"Central Government Body"** | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency; |
| **"Charges"**  | the charges for the Deliverables as specified in the Order Form and each Call Off Order;  |
| **“Claim”**  | any claim which it appears that the Buyer is, or may become, entitled to indemnification under this Contract and/or a Call Off Contract; |

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| **"Compliance Officer"**  | the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations; |
| **“Conditions”**  | means these short form terms and conditions of contract that shall apply to this Contract and each Call Off Contract; |
| **"Confidential** **Information"** | all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential. This shall include any information provided by a Beneficiary or one of its contractors, sub-contractors, funders, lenders, insurance brokers, agents, or professional advisers; |
| **"Conflict of Interest"**  | a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract or to the Buyer and/or the Beneficiary under a Call Off Contract, in the reasonable opinion of the Buyer; |
| **“Consumer Prices Index”** | the consumer prices index (CPI) (all items) (United Kingdom) or any official index replacing it; |
| **"Contract"**  | the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier’s counter signing the Order Form and includes the Order Form, these Conditions and the Annexes; |
| **"Controller"**  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **“Crown Body”**  | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **“Daily Rate”**  | has the meaning given to it in Annex 3 (Charges);  |
| **"Data Loss Event"**  | any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract and/or a Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract and/or a Call Off Contract, including any Personal Data Breach;  |
| **"Data Protection Impact Assessment"** | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;  |

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| **"Data Protection Legislation"** | (a) the UK GDPR, (b) the DPA 2018; (c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply); |
| **"Data Protection Liability Cap"** | has the meaning given to it in row 13 of the Order Form; |
| **"Data Protection Officer"**  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **"Data Subject"**  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **"Data Subject Access Request"** | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;  |
| **"Deliver"**  | hand over of the Deliverables to the Buyer at the address and on the date specified in the Order Form and/or a Call Off Order, which shall include unloading and any other specific arrangements agreed in accordance with clause 4.2. **"Delivered"** and **"Delivery"** shall be construed accordingly; |
| **“Deliverables”**  | means the Services to be supplied under: a) the Contract as set out in the Order Form; and/or b) each Call Off Contract as set out in the Call Off Order; |
| **"DPA 2018"**  | the Data Protection Act 2018; |
| **"EU"**  | the European Union; |
| **"EU GDPR"**  | Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law; |
| **"Existing IPR"**  | any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise); |
| **"Expiry Date"**  | the date for expiry of: a) the Contract as set out in the Order Form; or |

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|  | b) a Call Off Contract as set out in a Call Off Order;  |
| **"FOIA"**  | the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| **"Force Majeure Event"**  | any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from: (a) acts, events, omissions, happenings or non happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the “**Affected Party**”) which prevent or materially delay the Affected Party from performing its obligations under the Contract and/or a Call Off Contract; (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; (c) acts of a Crown Body, local government or regulatory bodies; (d) fire, flood or any disaster; or (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and (iii) any failure of delay caused by a lack of funds, and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party; |
| **"Good Industry Practice"**  | standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or  |

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|  | business sector;  |
| **"Government Data"**  | (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: (i) are supplied to the Supplier by or on behalf of the Buyer; or (ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract and/or a Call Off Contract; or (b) any Personal Data for which the Buyer is the Controller; |
| **"Information"**  | has the meaning given under section 84 of the FOIA;  |
| **"Information** **Commissioner"**  | the UK’s independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;  |
| **"Insolvency Event"**  | in respect of a person: (a) if that person is insolvent; (b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person’s assets or business; (d) if the person makes any composition with its creditors; or (e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction; |
| **"IP Completion Day"**  | has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020; |
| **"Key Staff"**  | any persons specified as such: a) in the Order Form; b) in a Call Off Order; or c) otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier in respect of the Contract and/or a Call Off Contract;  |

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| **"Law"**  | any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply; |
| **"Month"**  | a calendar month and "**Monthly**" shall be interpreted accordingly; |
| **"National Insurance"**  | contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004); |
| **"New IPR"**  | all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract and/or each Call Off Contract but shall not include the Supplier's Existing IPR; |
| **“New IPR Items”**  | means a deliverable, document, product or other item within which New IPR subsists; |
| **“Open Licence”**  | means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at http://www.nationalarchives.gov.uk/doc/open-government licence/version/3/ and the Open Standards Principles documented at https://www.gov.uk/government/publications/open standards-principles/open-standards-principles; |
| **"Order Form"**  | the order form signed by the Buyer and the Supplier printed above these Conditions; |
| **"Party"**  | the Supplier or the Buyer (as appropriate) and "**Parties**" shall mean both of them under this Contract and each Call Off Contract;  |
| **"Personal Data"**  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **"Personal Data Breach"**  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract and/or a Call Off Contract;  |
| **"Prescribed Person"**  | a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24  |

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|  | November 2016, available online at: https://www.gov.uk/government/publications/blowing-the whistle-list-of-prescribed-people-and-bodies-- 2/whistleblowing-list-of-prescribed-people-and-bodies as updated from time to time; |
| **"Processor"**  | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **“Processor Personnel”**  | all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract and/or a Call Off Contract; |
| **“Protective Measures”**  | technical and organisational measures which must take account of: (a) the nature of the data to be protected; (b) harm that might result from Data Loss Event; (c) state of technological development; (d) the cost of implementing any measures; including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| **"Purchase Order Number" or “PO Number”** | the Buyer’s unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the Contract and/or a Call Off Contract;  |
| **“Rectification Plan”**  | the Supplier’s plan (or revised plan) to rectify its material default which shall include: (a) full details of the material default that has occurred, including a root cause analysis; (b) the actual or anticipated effect of the material default; and (c) the steps which the Supplier proposes to take to rectify the material default (if applicable) and to prevent such material default from recurring, including timescales for such steps and for the rectification of the material default (where applicable); |
| **"Regulations"**  | the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time; |
| **"Request For**  | has the meaning set out in the FOIA or the Environmental  |

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| **Information"**  | Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);  |
| **"Services"**  | the services to be supplied by the Supplier to the Buyer and each Beneficiary under the Contract and each Call Off Contract;  |
| **“Specification”**  | the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form and/or a Call Off Order; |
| **"Staff Vetting Procedures"** | vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer’s procedures or policies for the vetting of personnel as specified in the Order Form or provided to the Supplier in writing following agreement to the same by the Supplier from time to time which shall apply to each Call Off Contract;  |
| **"Start Date"**  | the start date of: a) the Contract set out in the Order Form; b) a Call Off Contract set out in a Call Off Order; |
| **“Sub-Contract”**  | any contract or agreement (or proposed contract or agreement), other than the Contract or a Call Off Contract, pursuant to which a third party: (a) provides the Deliverables (or any part of them); (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them); |
| **Subcontractor**  | any person other than the Supplier, who is a party to a Sub Contract and the servants or agents of that person; |
| **Subprocessor**  | Any third party appointed to process Personal Data on behalf of the Processor related to the Contract or a Call Off Contract; |
| **"Supplier"**  | the person named as Supplier in the Order Form and the Call Off Order; |
| **"Supplier Staff"**  | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Contract and each Call Off Contract; |

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| **“Transparency** **Information”** | In relation to Contracts with a value above the relevant threshold set out in Part 2 of the Regulations only, the content of the Contract including Call Off Contracts, including any changes to this Contract and/or Call Off Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract and each Call Off Contract required to be published by the Buyer to comply with its transparency obligations, including those set out in Public Procurement Policy Note 09/21 (update to legal and policy requirements to publish procurement information on Contracts Finder) (https://www.gov.uk/government/publications/ppn-0921- requirements-to-publish-on-contracts-finder) and Public Procurement Policy Note 01/17 (update to transparency principles) where applicable (https://www.gov.uk/government/publications/procurement policy-note-0117-update-to-transparency-principles) except for: (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (b) Confidential Information; |
| **"Term"**  | the period from the Start Date to the Expiry Date: a) in respect of the Contract as such period may be extended in accordance with clause 11.2 or terminated in accordance with the Contract; b) in respect of a Call Off Contract as such period may be extended in accordance with the Call Off Order or terminated in accordance with the Call Off Contract;  |
| **“Third Party IPR”**  | intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables; |
| **"UK GDPR"**  | has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4); |
| **"VAT"**  | value added tax in accordance with the provisions of the Value Added Tax Act 1994;  |
| **"Worker"**  | any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement policynote-0815-tax-arrangements-of-appointees) applies  |

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|  | in respect of the Deliverables; and |
| **"Working Day"**  | a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

**2. Understanding the Contract**

In the Contract and each Call Off Contract, unless the context otherwise requires:

references to numbered clauses are references to the relevant clause in these Conditions;

any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

the headings in this Contract are for information only and do not affect the interpretation of the Contract and each Call Off Contract;

references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;

the singular includes the plural and vice versa;

a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that Law;

the word "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";

any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time):

(a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

(b) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

**3. How the Contract works**

****This Contract governs the relationship between the Buyer and the Supplier in respect of the provision of the Deliverables by the Supplier to the Buyer.

The Buyer appoints the Supplier as a supplier of the Deliverables and the Supplier shall be eligible to receive Call Off Orders for such Deliverables from the Buyer during the Term.

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The Buyer may at its absolute discretion and from time to time order Deliverables from the Supplier in accordance with the ordering procedure set out in clauses 3.6 to 3.9 during the Term.

The Supplier acknowledges that, in entering this Contract, no form of exclusivity or volume guarantee has been granted by the Buyer for the Deliverables and the Buyer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Deliverables.

The Supplier warrants and represents that its tender (if any) and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate and shall be deemed to repeat all such statements as remaining true and accurate each time it enters into a Call Off Contract.

**Call off ordering procedure**

****At any time during the Term, the Buyer may place a Call Off Order with the Supplier by serving an order in writing in substantially the form set out in Annex 4 or such similar or analogous form agreed with the Supplier in writing including systems of ordering involving email or other online solutions.

Following receipt of a Call Off Order, the Supplier shall promptly and in any event within 5 Working Days acknowledge receipt of the Call Off Order and either:

(a) provide to the Buyer a completed Call Off Order; or

(b) notify the Buyer in writing and with detailed reasons that it is unable to fulfil the Call Off Order;

In respect of each completed Call Off Order, the Buyer may acting reasonably request from the Supplier to:

(a) discuss the contents of a Call Off Order;

(b) make amendments to a Call Off Order;

(c) re-submit a Call Off Order to the Buyer with such amendments requested.

In each case, the Supplier shall comply with the Buyer’s requests promptly. A Call Off Order shall only be considered final and agreed if approved in writing by the Buyer.

The Parties acknowledge and agree that the placement of a Call Off Order is an “invitation to treat” by the Buyer. Accordingly, and subject to clause 3.8 (if applicable), the Supplier shall sign and return the final and agreed Call Off Order which shall constitute its offer to the Buyer. The Buyer shall signal its acceptance of the Supplier’s offer and the formation of a Call Off Contract by counter-signing and dating the Call Off Order and sending it to the Supplier.

**4. What needs to be delivered**

**All Deliverables**

(a) The Supplier must provide Deliverables: (i) in accordance with each Call Off Contract, the Specification and the Contract; (ii) using reasonable skill and care;

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(iii) using Good Industry Practice; (iv) using its own policies, processes and internal quality control measures as long as they don’t conflict with the Contract and the Call Off Contract; (v) on the dates agreed; and (vi) that comply with all Law.

(b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

**Not Used**

**Services clauses**

(a) Late Delivery of the Services will be a default of the Contract and/or a Call Off Contract.

(b) The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services in respect of each Call Off Contract and ensure that Supplier Staff comply with any reasonable instructions including the security requirements (where any such requirements have been provided by the Buyer and/or the Beneficiary).

(c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services to the extent this is required under the Contract and/or a Call Off Contract.

(d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services in respect of each Call Off Contract. Any equipment provided by the Buyer and/or a Beneficiary to the Supplier for supplying the Services remains the property of the Buyer or the Beneficiary (as applicable) and is to be returned to the Buyer or the Beneficiary (as applicable) on expiry or termination of the Contract and/or a Call Off Contract.

(e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract and each Call Off Contract.

(f) The Supplier shall comply with all instructions provided by a Beneficiary in respect of use of premises, equipment, and information pursuant to a Call Off Contract including Confidential Information.

(g) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's or the Beneficiary’s operations, employees or other contractors under the Contract and each Call Off Contract.

(h) On completion of the Services pursuant to each Call Off Contract, the Supplier is responsible for leaving the Buyer's and/or the Beneficiary’s premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's and/or the Beneficiary’s premises or property, other than fair wear and tear.

(i) The Supplier must ensure all Services, and anything used to deliver the Services under the Contract and each Call Off Contract, are of good quality and free from defects.

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(j) The Buyer is entitled to withhold payment for partially or undelivered Services pursuant to a Call Off Contract, but doing so does not stop it from using its other rights under the Contract and/or a Call Off Contract.

(k) Where the Buyer is not satisfised with the quality of the Services delivered by the Supplier pursuant to a Call Off Contract, the Supplier shall rectify any such issues to the satisfaction of the Buyer without any additional cost.

**5. Pricing and payments**

****In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in each Call Off Order.

All Charges:

(a) exclude VAT, which is payable on provision of a valid VAT invoice;

(b) exclude expenses, which are payable subject to being approved in advance and in writing by the Buyer’s project director for a Call Off Contract and all such expenses must comply with the Cabinet Office expenses policy rules and limits. A copy of the Cabinet Office expenses policy can be provided upon request; and

(c) include all costs connected with the supply of Deliverables.

The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the invoice or in the Call Off Order.

A Supplier invoice is only valid if it:

(a) includes all appropriate references including the Purchase Order Number, the Call Off Order Number and other details reasonably requested by the Buyer; and

(b) includes a detailed breakdown of Deliverables which have been delivered.

If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract and/or the Call Off Contract for a failure to pay undisputed sums in accordance with clause 11.8. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 37.

The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract and/or a Call Off Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.

The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

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

****If Supplier fails to comply with the Contract or a Call Off Contract as a result of a Buyer Cause:

(a) the Buyer cannot terminate the Contract or a Call Off Contract under clause 11;

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(b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract or a Call Off Contract;

(c) the Supplier is entitled to additional time needed to deliver the Deliverables; and

(d) the Supplier cannot suspend the ongoing supply of Deliverables pursuant to one or more Call Off Contracts.

Clause 6.1 only applies if the Supplier:

(a) gives notice to the Buyer within 10 Working Days of becoming aware; (b) demonstrates that the failure only happened because of the Buyer Cause; and (c) mitigated the impact of the Buyer Cause.

**7. Record keeping and reporting**

****The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form in respect of all Call Off Contracts.

The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract and each Call Off Contract for 7 years after the date of expiry or termination of the Contract or the relevant Call Off Contract (as applicable) and in accordance with the UK GDPR or the EU GDPR as the context requires.

The Supplier must allow any auditor appointed by the Buyer access to its premises to verify all contract accounts and records of everything to do with the Contract, each Call Off Contract and provide copies for the Audit.

During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.

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.

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

(a) tell the Buyer and give reasons;

(b) propose corrective action; and

(c) provide a deadline for completing the corrective action.

If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract or a Call Off Contract then the Buyer may:

(a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract or a Call Off Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and

(b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with

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the plan, terminate the Contract or a Call Off Contract immediately for material breach (or on such date as the Buyer notifies).

If there is a material default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the material default. 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 in respect of the Contract or a Call Off Contract. Once such Rectification Plan is agreed between the Parties (without the Buyer limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan in respect of the Contract or a Call Off Contract at its own cost.

**8. Supplier Staff**

****The Supplier Staff involved in the performance of the Contract and each Call Off Contract must:

(a) be appropriately trained and qualified;

(b) be vetted in accordance with the Staff Vetting Procedures; and

(c) comply with all conduct requirements when on the Buyer's premises and/or the Beneficiary’s premises.

Where the Buyer decides one of the Supplier's Staff isn’t suitable to work on the Contract or a Call Off Contract, the Supplier must replace them with a suitably qualified alternative.

If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 29.1 to 29.3 .

The Supplier must provide a list of Supplier Staff needing to access the Buyer's and/or the Beneficiary’s premises and say why access is required.

The Supplier indemnifies each of the Buyer and the Beneficiary against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff under the Contract and/or a Call Off Contract.

The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form, in the Call Off Order or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:

(a) requested to do so by the Buyer or the Buyer approves such removal or replacement (not to be unreasonably withheld or delayed);

(b) the person concerned resigns, retires or dies or is on parental or long-term sick leave; or

(c) the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.

The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract and/or a Call Off Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction

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(whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

**9. Rights and protection**

****The Supplier warrants and represents that:

(a) it has full capacity and authority to enter into and to perform the Contract; (b) the Contract is executed by its authorised representative;

(c) it is a legally valid and existing organisation incorporated in the place it was formed;

(d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;

(e) 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 the Buyer to receive the Deliverables;

(f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and

(g) it is not impacted by an Insolvency Event.

The warranties and representations in clause 3.5 and clause 9.1 are repeated each time the Supplier enters into a Call Off Contract.

The warranties and representations in clause 3.5 and clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract and each Call Off Contract.

The Supplier indemnifies each of the Buyer and each Beneficiary against each of the following:

(a) wilful misconduct of the Supplier, any of its Subcontractor and/or Supplier Staff that impacts the Contract and each Call Off Contract; and

(b) non-payment by the Supplier of any tax or National Insurance.

If the Supplier becomes aware of a representation or warranty made in relation to the Contract and/or a Call Off Contract that becomes untrue or misleading, it must immediately notify the Buyer.

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

**10. NOT USED**

**11. Ending the Contract and/or a Call Off Contract**

****The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract, or earlier if required by Law.

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

A Call Off Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of that Call Off Contract, or earlier if required by Law.

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The Buyer can extend a Call Off Contract where set out in the Call Off Order in accordance with the terms in the Call Off Order.

**Ending the Contract and/or a Call Off Contract without a reason**

(a) The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice, and if it's terminated clause 11.7(a)(ii) to 11.7(a)(viii) applies. Termination of the Contract shall not affect any Call Off Contract(s), which shall subsist(s) unless the Buyer gives notice to terminate pursuant to clause 11.5(b).

(b) The Buyer has the right to terminate a Call Off Contract at any time without reason or liability by giving the Supplier not less than 14 days’ written notice, and if it’s terminated clause 11.7(a)(ii) to 11.7(a)(viii) applies. Termination of a Call Off Contract shall not affect any other Call Off Contract, which shall subsist unless the Buyer gives notice to terminate in respect of each Call Off Contract.

**When the Buyer can end the Contract and/or a Call Off Contract**

(a) If any of the following events happen, the Buyer has the right to immediately terminate the Contract and/or a Call Off Contract by issuing a termination notice in writing to the Supplier:

(i) there's a Supplier Insolvency Event;

(ii) if the Supplier repeatedly breaches the Contract and/or a Call Off Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract and/or a Call Off Contract;

(iii)the Supplier is in material breach of any obligation under the Contract and/or a Call Off Contract which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

(iv)there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;

(v) 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 or a Call Off Contract was awarded;

(vi)the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or

(vii) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.

(b) 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/or a Call Off Contract and clause 11.7(a)(ii) to 11.7(a)(viii) applies.

**What happens if the Contract ends (Buyer termination)**

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(a) Where the Buyer terminates the Contract and/or a Call Off Contract under clause 11.6(a), 7.7(b), 29.4(b), all of the following apply:

(i) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract and/or a Call Off Contract;

(ii) the Buyer's payment obligations under the terminated Contract and/or a Call Off Contract stop immediately;

(iii) accumulated rights of the Parties are not affected;

(iv) the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;

(v) the Supplier must promptly return any of the Buyer's and/or the Beneficiary’s property provided under the Contract and each Call Off Contract;

(vi) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;

(vii) the Supplier must repay to the Buyer all the Charges pursuant to the Contract and/or a Call Off Contract that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry; and

(viii) the following clauses survive the termination of the Contract and/or a Call Off Contract: 7, 8.5, 10, 12, 14, 15, 16, 19, 20, 37 and 38 and any clauses which are expressly or by implication intended to continue.

**When the Supplier can end the Contract and what happens when the contract ends (Buyer and Supplier termination)**

(a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call Off Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over £1,000, within 30 days of the date of the reminder notice.

(b) Where the Buyer terminates the Contract in accordance with clause 11.5(a) and/or a Call Off Contract in accordance with clause 11.5(b) or the Supplier terminates a Call Off Contract under clause 11.8(a) or the Contract or a Call Off Contract under clause 24.4:

(i) the Buyer must promptly pay all outstanding charges incurred by the Supplier;

(ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract and/or a Call Off Contract had not been terminated; and

(iii)clauses 11.7(a)(ii) to 11.7(a)(viii) apply.

(c) The Supplier also has the right to terminate the Contract and/or a Call Off Contract in accordance with Clauses 21.3 and 24.4.

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**Partially ending and suspending the Contract and/or a Call Off Contract**

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

(b) The Buyer can only partially terminate or suspend the Contract and/or a Call Off Contract if the remaining parts of the Contract and/or a Call Off Contract can still be used to effectively deliver the intended purpose. Termination of the Contract shall not affect any subsisting Call Off Contract.

(c) The Parties must agree (in accordance with clause 26) any necessary variation required by clause 11.9, but the Supplier may not either:

(i) reject the variation; or

(ii) increase the Charges, except where the right to partial termination is under clause 11.5.

(d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.9.

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

****The Buyer’s total aggregate liability under or in connection:

(a) with the Contract (whether in tort, contract or otherwise) is no more than the Charges paid or payable to the Supplier for all Call Off Contracts without double counting.

(b) with a Call Off Contract (whether in tort, contract or otherwise) is no more than the Charges paid or payable to the Supplier for a Call Off Contract without double counting.

The Supplier’s total aggregate liability under or in connection:

(a) with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier for all Call Off Contracts awarded under the Contract.

(b) with a Call Off Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier for a Call Off Contract.

No Party is liable to the other for:

(a) any indirect losses; and/or

(b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

In spite of clause 12.1 and clause 12.2, neither Party limits or excludes any of the following:

(a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

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(b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or

(c) any liability that cannot be excluded or limited by Law.

In spite of clause 12.2, the Supplier does not limit or exclude its liability for any indemnity given under clauses 8.5, 9.4, Annex 5, clause 10.5 (IPR), 13.2 or 33.2(b).

Notwithstanding clause 12.2, but subject to clause 12.4, the Supplier’s total aggregate liability under clause 14.8(e) shall not exceed the Data Protection Liability Cap.

Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract and/or a Call Off Contract, including any indemnities.

If more than one Supplier is party to the Contract or a Call Off Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

**13. Obeying the Law**

****The Supplier must, in connection with provision of the Deliverables:

(a) comply and procure that its Subcontractors comply with the Supplier Code of Conduct:

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/a ttachment\_data/file/779660/20190220-Supplier\_Code\_of\_Conduct.pdf) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form;

(b) comply with the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989;

(c) support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;

(d) comply with the model contract terms contained in Example 1 of Annex C of the guidance to PPN 05/19 (Tackling Modern Slavery in Government Supply Chains) shall apply to the Contract, as such clauses may be amended or updated from time to time; and

(e) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: https://www.gov.uk/government/collections/sustainable-procurement-the government-buying-standards-gbs.

The Supplier indemnifies each of the Buyer and each Beneficiary against any costs resulting from any default by the Supplier relating to any applicable Law to do with the Contract and each Call Off Contract.

The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, clause 13.1 and clauses 28 to 35.

**14. Data Protection**

****The obligations in this clause 14 apply in respect of the Contract and each Call Off Contract.

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

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.

The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Buyer (where any such requirements have been provided).

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.

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

(a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or

(b) restore the Government Data itself or using a third party.

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

The Supplier:

(a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;

(b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;

(c) must securely destroy all storage media that has held Government Data at the end of life of that media using Good Industry Practice;

(d) securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and

(e) indemnifies the Buyer and each Beneficiary against any and all losses incurred if the Supplier breaches clause 14 or any Data Protection Legislation.

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 the Contract and each Call Off Contract dictates the status of each party under the DPA 2018. A Party may act as:

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

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

**Where one Party is Controller and the other Party its Processor**

(a) Where a Party is a Processor, it must only process Personal Data if authorised to do so in Part A - *Authorised Processing Template* of Annex 1 – *Processing Personal Data* by the Controller. Any further written instructions relating to the

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processing of Personal Data are incorporated into Part A - *Authorised Processing Template* of Annex 1 – *Processing Personal Data*.

(b) The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, including:

(i) a systematic description of the expected processing and its purpose; (ii) the necessity and proportionality of the processing operations; (iii)the risks to the rights and freedoms of Data Subjects; and

(iv)the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.

(c) The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.

(d) The Processor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.

(e) If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.

(f) The Processor must use 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 clause 14;

(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 provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Contract or a Call Off Contract; and

(iv)have undergone adequate training in the use, care, protection and handling of Personal Data.

(g) Where the Personal Data is subject to UK GDPR, the Processor must 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:

(i) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or

(ii) 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

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published by the Information Commissioner's Office from time to time as well as any additional measures determined by the Controller;

(iii)the Data Subject has enforceable rights and effective legal remedies when transferred;

(iv)the Processor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(v) the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.

(h) Where the Personal Data is subject to EU GDPR, the Processor must not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the transfer is in accordance with Article 45 of the EU GDPR; or

(i) the Controller or Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller 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 Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii)the Processor 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 Controller in meeting its obligations); and

(iv)the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.

(j) The Processor must notify the Controller immediately if it:

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

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

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

(iv)receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(v) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and

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(vi)becomes aware of a Data Loss Event.

(k) Any requirement to notify under clause (j) includes the provision of further information to the Controller in stages as details become available.

(i) The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause (j). This includes giving the Controller:

(ii) full details and copies of the complaint, communication or request;

(iii)reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;

(iv)any Personal Data it holds in relation to a Data Subject on request; (v) assistance that it requests following any Data Loss Event; and

(vi)assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.

(l) The Processor must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:

(i) is not occasional;

(ii) 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

(iii)is likely to result in a risk to the rights and freedoms of Data Subjects.

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

(n) Before allowing any Subprocessor to process any Personal Data, the Processor must:

(i) notify the Controller in writing of the intended Subprocessor and processing; (ii) obtain the written consent of the Controller;

(iii)enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor; and

(iv)provide the Controller with any information about the Subprocessor that the Controller reasonably requires.

(o) The Processor remains fully liable for all acts or omissions of any Subprocessor.

(p) At any time the Buyer can, with 30 Working Days’ notice to the Supplier, change this clause 14 to replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

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(q) The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office or any other regulatory authority.

**15. What you must keep confidential**

****Each Party must:

(a) keep all Confidential Information it receives confidential and secure pursuant to the Contract and each Call Off Contract;

(b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract and/or each Call Off Contract; and

(c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party under the Contract or a Call Off Contract in any of the following instances:

(a) 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;

(b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;

(c) if the information was given to it by a third party without obligation of confidentiality; (d) if the information was in the public domain at the time of the disclosure;

(e) if the information was independently developed without access to the disclosing Party's Confidential Information;

(f) on a confidential basis, to its auditors or for the purposes of regulatory requirements;

(g) on a confidential basis, to its professional advisers on a need-to-know basis; and

(h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

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 and/or a Call Off Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract and each Call Off Contract by the persons to whom disclosure has been made.

The Buyer may disclose Confidential Information under this Contract and/or a Call Off Contract in any of the following cases:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;

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(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;

(c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;

(d) where requested by Parliament; and

(e) under clauses 5.7 and 16.

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

Transparency Information, and Information which is exempt from disclosure by clause 16 is not Confidential Information.

The Supplier must not make any press announcement or publicise the Contract and/or a Call Off Contract or any part of the Contract and/or a Call Off Contract in any way, without the prior written consent of the Buyer and must take all reasonable endeavours to ensure that Supplier Staff do not either.

The Supplier shall comply with any specific requirements relating to confidentiality required by the Beneficiary under a Call Off Contract including entering into a non disclosure agreement where this is required in respect of Confidential Information.

**16. When you can share information**

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

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:

(a) comply with any FOIA request;

(b) comply with any Environmental Information Regulations (“**EIR**”) request;

(c) if the Contract and/or a Call Off Contract has a value over the relevant threshold in Part 2 of the Regulations, comply with any of its obligations in relation to publishing Transparency Information.

To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request For Information and may talk to the Supplier to help it decide whether to publish information under clause 16. However, the extent, content and format of the disclosure is the Buyer’s decision in its absolute discretion.

**17. Insurance**

****The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under the Contract and all Call Off Contracts providing as a minimum the following levels of cover:

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(a) Public liability insurance with a limit of indemnity of at least £1 million in relation to any one claim or series of claims;

(b) Employer’s liability insurance with a limit of indemnity of at least £1 million per claim in relation to any one claim or series of claims;

(c) Professional indemnity insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and shall ensure that all professional consultants and Sub-Contractors involved in the provision of the Deliverables hold and maintain appropriate cover;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier’s performance of the Contract and/or a Call Off Contract, including death or personal injury, loss or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

The Supplier shall give the Buyer, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premium due under those policies.

If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Buyer may make alternative arrangements to protect its interests and recover the costs of such arrangements from the Supplier.

The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract and/or a Call Off Contract.

The Supplier shall hold and maintain the Required Insurances for a minimum of six years following expiry or earlier termination of the Contract or a Call Off Contract, whichever occurs later.

**18. Invalid parts of the Contract or a Call Off Contract**

If any part of the Contract or of a Call Off 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 or a Call Off Contract (as applicable) as much as required and rendered ineffective as far as possible without affecting the rest of the Contract or a Call Off Contract (as applicable), whether it’s valid or enforceable.

**19. No other terms apply**

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

**20. Other people's rights in the contract**

****Except as expressly provided elsewhere in the Contract and/or a Call Off Contract, the Contract and/or a Call Off Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act (“**CRTPA”**) to enforce any term of the Contract and/or a

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Call Off Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract and/or a Call Off Contract are not subject to the consent of any other person.

**21. Circumstances beyond your control**

****Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract and/or a Call Off Contract while the inability to perform continues, if it both:

(a) provides written notice to the other Party; and

(b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

Any failure or delay by the Supplier to perform its obligations under the Contract and/or a Call Off Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff 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.

Either Party can partially or fully terminate the Contract and/or a Call Off Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

Where a Party terminates under clause 21.3:

(a) each Party must cover its own losses; and

(b) clause 11.7(a)(ii) to 11.7(a)(viii) applies.

**22. Relationships created by the Contract and each Call Off Contract**

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

**23. Giving up contract rights**

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

**24. Transferring responsibilities**

****The Supplier cannot assign, novate or in any other way dispose of the Contract or a Call Off Contract or any part of the Contract or a Call Off Contract without the Buyer's written consent.

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

When the Buyer uses its rights under clause 24.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

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The Supplier can terminate the Contract or a Call Off Contract novated under clause 24.2 to a private sector body that is experiencing an Insolvency Event.

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

**25. Supply Chain**

****Except where the Buyer permits the Supplier to sub-contract a Call Off Contract or part of a Call Off Contract through the Call Off Order subject to any terms specified in the Call Off Order, the Supplier cannot sub-contract the Contract, a Call Off Contract or any part of the Contract or a Call Off Contract without the Buyer’s prior written consent. The Supplier shall provide the Buyer with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract or a Call Off Contract together with any other information requested by the Buyer (acting reasonably). Subject to the remainder of this clause 25, the decision of the Buyer to consent or not will not be unreasonably withheld or delayed.

The Buyer may impose conditions including that the Supplier shall obtain collateral warranties from the Subcontractor in favour of the Buyer and the Beneficiary in a form approved by the Buyer.

The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

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

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

(c) the proposed Subcontractor employs unfit persons; and/or

(d) the Buyer is not satisfied (acting reasonably) that there is no actual, potential or perceived Conflict of Interest in respect of the Subcontractor.

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

(a) their name;

(b) the scope of their appointment; and

(c) the duration of their appointment.

The Supplier must exercise due skill and care when it selects and appoints Subcontractors.

The Supplier will ensure that all Sub-Contracts in the Supplier’s supply chain entered into after the Start Date of the Contract wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Contract or a Call Off 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;

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(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.

The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier’s supply chain entered into before the Start Date of the Contract but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract or a Call Off 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.

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 within the meaning of Section 450 of the Corporation Tax Act 2010 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 11.6;

(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 Regulations.

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.

**26. Changing the Contract and/or a Call Off Contract**

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

**27. How to communicate about the Contract and/or a Call Off Contract**

****All notices under the Contract and/or a Call Off 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.

Notices to the Buyer or Supplier must be sent to their address or email address in the Order Form and/or the Call Off Order.

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

**28. Dealing with claims**

****If the Buyer becomes aware of any Claim, the Buyer must:

(a) notify the Supplier as soon as reasonably practical becoming aware of a Claim;

(b) at the Supplier’s cost, allow the Supplier to conduct all negotiations and proceedings to do with a Claim;

(c) at the Supplier’s cost, give the Supplier reasonable assistance with the Claim if requested; and

(d) not make admissions about the Claim without the prior written consent of the Supplier which cannot be unreasonably withheld or delayed.

The Supplier must:

(a) consider and defend the Claim diligently and in a way that does not damage the Buyer’s reputation; and

(b) not settle or compromise any Claim without the Buyer's prior written consent which it must not unreasonably withhold or delay.

**29. Preventing fraud, bribery and corruption**

****The Supplier shall not:

(a) commit any criminal offence referred to in 57(1) and 57(2) of the Regulations; or

(b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract and/or a Call Off Contract

or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract and/or a Call Off Contract or any other public function.

The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 29.1 and any fraud by the Supplier Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and/or a Call Off Contract and shall notify the Buyer

immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

If the Supplier notifies the Buyer as required by clause 29.2, 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.

If the Supplier or the Supplier Staff engages in conduct prohibited by clause 29.1 or commits fraud in relation to the Contract, a Call Off Contractor any other contract with the Crown (including the Buyer) the Buyer may:

(a) require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the default; and

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(b) immediately terminate the Contract and/or a Call Off Contract.

**30. Equality, diversity and human rights**

****The Supplier must follow all applicable employment and equality Law when they perform their obligations under the Contract and/or a Call Off Contract, including:

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

(b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

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 and/or a Call Off Contract.

**31. Health and safety**

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

(a) all applicable Law regarding health and safety including its health and safety policy while at the Supplier’s premises;

(b) the Buyer's current health and safety policy while at the Buyer’s premises, as provided to the Supplier; and

(c) the Beneficiary’s current health and safety policy while at the Beneficiary’s premises, as provided to the Supplier pursuant to a Call Off Contract.

The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they’re aware of at the Buyer and/or the Beneficiary premises that relate to the performance of the Contract and/or a Call Off Contract.

**32. Environment and sustainability**

****In performing its obligations under the Contract and/or a Call Off Contract, the Supplier shall, to the reasonable satisfaction of the Buyer:

(a) meet, in all material respects, the requirements of all applicable Laws regarding the environment; and

(b) comply with its obligations under the Buyer's current environmental policy, which the Buyer must provide.

The Supplier must ensure that Supplier Staff are aware of the Buyer's environmental policy.

**33. Tax**

****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 and/or a Call Off Contract where the Supplier has not paid a minor tax or social security contribution.

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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 and/or a Call Off Contract, the Supplier must both:

(a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and

(b) indemnify the Buyer and each Beneficiary 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 Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

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 requirements that:

(a) the Buyer may, at any time during the term of the Contract and/or a Call Off Contract, request that the Worker provides information which demonstrates they comply with clause 33.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

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

(c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn’t good enough to demonstrate how it complies with clause 33.2 or confirms that the Worker is not complying with those requirements; and

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

**34. Conflict of interest**

****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 in respect of the Contract and/or a Call Off Contract.

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 in respect of the Contract and/or a Call Off Contract.

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 in respect of the Contract and/or a Call Off Contract. 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 the Contract and/or a Call Off Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and clauses 11.7(a)(ii) to 11.7(a)(viii) shall apply.

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**35. Reporting a breach of the Contract and/or a Call Off Contract**

****As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of Law, clause 13.1, or clauses 28 to 34.

The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 35.1 to the Buyer or a Prescribed Person.

**36. 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 and/or a Call Off Contract.

**37. Resolving disputes**

****If there is a dispute between the Parties in respect of the Contract and/or a Call Off Contract, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.

If the dispute in respect of the Contract and/or a Call Off Contract is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 37.3 to 37.5.

Unless the Buyer refers the dispute in respect of the Contract and/or a Call Off Contract to arbitration using clause 37.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

(a) determine the dispute;

(b) grant interim remedies; and

(c) grant any other provisional or protective relief.

The Supplier agrees that the Buyer has the exclusive right to refer any dispute in respect of the Contract and/or a Call Off Contract 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.

The Buyer has the right to refer a dispute in respect of the Contract and/or a Call Off Contract to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 37.3, 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 37.4.

The Supplier cannot suspend the performance of the Contract and/or a Call Off Contract during any dispute.

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**38. Which law applies and jurisdiction**

This Contract and each Call Off Contract and any issues or disputes arising out of, or connected to the Contract or a Call Off Contract, are governed by English law. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract and each Call Off Contract or their subject matter or formation (including non

contractual disputes or claims).

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