



Ministry of Housing,  
Communities &  
Local Government

# Mid-tier Core Terms

Version	Date	Lead Author	Main Changes

*Please note that this and all future correspondence exchanged between this authority and [contractor/firm] is to be treated as strictly subject to contract until such time as binding contracts shall have been validly concluded between [our respective clients] relating to this proposed transaction. Your continued correspondence with us shall be taken as a firm acceptance of this understanding on behalf of yourselves and your clients*

## 1. Definitions and Interpretation

- 1.1 This Contract shall be interpreted in accordance with Schedule 1 (Definitions). In this Contract, the terms and expressions set out in Schedule 1 shall have the meanings given therein, unless the context otherwise requires.

## 2. Basis of the contract

- 2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. Subject to the Regulations, the Buyer may:

2.1.1 make changes to the Award Form

- 2.1.2 create new Schedules
- 2.1.3 exclude optional template Schedules
- 2.1.4 use Special Terms in the Award Form to add or change terms

## 2.2 The Contract:

- 2.2.1 is between the Supplier and the Buyer
- 2.2.2 and includes the Core Terms, Schedules and any other changes or items in the completed Award Form

2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.4 The Supplier shall not be discharged from any obligation, or be entitled to additional Costs or Charges resulting from a failure to:

- 2.4.1 verify the accuracy of any information provided by the Buyer; and
- 2.4.2 properly perform its own adequate checks and due diligence

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

2.6 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## 3. Deliverables

### 3.1 Provision of deliverables

- 3.1.1 The Supplier must provide Deliverables:
  - 3.1.1.1 that comply with the Specification, the Tender Response and the Contract
  - 3.1.1.2 using Good Industry Practice
  - 3.1.1.3 using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract
  - 3.1.1.4 on the dates agreed
  - 3.1.1.5 that comply with Law
- 3.1.2 In the event that a level of warranty is not specified in the Award Form, the Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all material defects.

### 3.2 Goods clauses

- 3.2.1 All Goods delivered must be new (or as new if recycled), unused and of recent origin unless otherwise stated in the specification.

- 3.2.2 All manufacturer warranties covering the Goods must be assigned to the Buyer on request and at no additional cost to the Buyer.
- 3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and informs the Supplier within 3 Working Days of Delivery.
- 3.2.5 The Buyer is entitled to inspect the Goods prior to Delivery
- 3.2.6 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.7 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.8 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.9 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.10 The Supplier must provide all tools, information and instructions the Buyer requires to make use of the Goods.
- 3.2.11 The Supplier shall indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action relating to the Recall of the Goods.
- 3.2.12 The Buyer may cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- 3.2.13 In the event the Buyer rejects any Goods that do not conform with Clause 3, the Supplier shall, at the Buyer's option and request, repair, replace, refund or substitute those Goods at the expense of the Supplier. The Supplier shall indemnify and cover any costs incurred by the Buyer as a result of instructing any third party to repair or re-supply any Goods.

### **3.3 Services clauses**

- 3.3.1 The Supplier shall at all times comply with the Standards, Schedule 2 and Schedules 10 and 11.
- 3.3.2 The Supplier acknowledges that the Buyer relies on the skill and judgement of the Supplier in the supply of the Services and the performance of the Supplier's obligations under the Contract.
- 3.3.3 The Supplier shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such skills, qualifications and experience as are necessary for the proper supply of the Services. The Supplier shall ensure that all Staff involved in providing the Services are properly managed and supervised.
- 3.3.4 Late Delivery of the Services shall constitute a Default of the Contract.
- 3.3.5 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.6 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.

- 3.3.7 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 3.3.8 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.9 The Supplier shall ensure that all Services, and any equipment used to Deliver the Services, is of good quality and free from defects.
- 3.3.10 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so is without prejudice to its other rights under the Contract.

## **4. Pricing and payments**

- 4.1 In exchange for the Buyer receiving the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2 All Charges:
  - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice
  - 4.2.2 include all costs connected with the Supply of Deliverables
- 4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer
  - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not occur, the Buyer can publish the details of the late payment or non-payment.
- 4.7 If the Buyer can obtain more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may either:
  - 4.7.1 require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or
  - 4.7.2 enter into a direct agreement with the Subcontractor or third party for the relevant item
- 4.8 If the Buyer acts in accordance with Clause 4.7, the Charges shall be reduced by an agreed amount by using the Variation Procedure.
- 4.9 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- 4.9.1 the relevant item being made available to the Supplier if required to provide the Deliverables
  - 4.9.2 any reduction in the Charges excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges
- 4.10 The Supplier has no right of set-off, counterclaim, discount or abatement unless such is ordered by a court.

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

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
- 5.1.1 the Buyer may not terminate the Contract under Clause 10.4.1
  - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delayed Payments, liability and Deduction under this Contract
  - 5.1.3 the Supplier is entitled to additional time required to make the Delivery
  - 5.1.4 the Supplier is not entitled to suspend the ongoing supply of Deliverables
- 5.2 Clause 5.1 shall only apply if the Supplier:
- 5.2.1 gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware of the same
  - 5.2.2 demonstrates that the Supplier Non-Performance only occurred as a result of the Buyer Cause
  - 5.2.3 mitigated the impact of the Buyer Cause

## **6. Record keeping and reporting**

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract for 7 years after the End Date and in accordance with the GDPR.
- 6.3 The Supplier must allow any Auditor access to its premises to verify all contract accounts and records of all matters arising out of or connected with the Contract and provide copies for an Audit.
- 6.4 The Supplier must provide information to the Auditor and reasonable co-operation at the Auditor's request.
- 6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 6.5.1 inform the Buyer and give reasons

- 6.5.2 propose corrective action
- 6.5.3 provide a deadline for completing the corrective action

## **7. Supplier staff**

- 7.1 The Supplier Staff involved in the performance of the Contract must:
  - 7.1.1 be appropriately trained and qualified
  - 7.1.2 be vetted using Good Industry Practice and the Security Policy
  - 7.1.3 comply with all conduct requirements when on the Buyer's Premises
- 7.2 Where the Buyer decides that one or more of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with suitably qualified alternatives.
- 7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.
- 7.4 The Supplier must provide a list of Supplier Staff requiring access to the Buyer's Premises and give reasons why access is required.
- 7.5 The Supplier shall indemnify the Buyer against all claims brought by any person employed by the Supplier, caused by an act or omission of the Supplier or any Supplier Staff.

## **8. Warranties and Representations**

- 8.1 The Supplier warrants and represents on the Start Date and for the Term that:
  - 8.1.1 it has full capacity and authority to enter into and to perform the Contract
  - 8.1.2 the Contract is executed by its authorised representative
  - 8.1.3 it is a legally valid and existing organisation incorporated in the place it was formed
  - 8.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract
  - 8.1.5 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract
  - 8.1.6 in entering into the Contract it has not committed any fraud
  - 8.1.7 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract
  - 8.1.8 it is not impacted by an Insolvency Event
- 8.2 The warranties and representations in Clauses 2.6 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 8.3 The Supplier confirms that in entering into the Contract it is not relying on any statements, warranties

representations whether given or made, (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Buyer in connection with the subject matter of the Contract except those expressly set out in the Contract and the Supplier hereby waives and releases the Buyer in respect thereof absolutely.

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

8.4.1 Wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract

8.4.2 Non-payment by the Supplier of any tax or National Insurance

8.5 All claims indemnified under this Contract must be handled in accordance with Clause 26.

8.6 The Buyer may terminate the Contract for breach of any warranty or indemnity where it is entitled to do so.

8.7 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

8.8 All third party warranties and indemnities covering the Deliverables shall be assigned for the Buyer's benefit by the Supplier as soon as practicable.

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

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

9.1.1 receive and use the Deliverables; and

9.1.2 make use of the deliverables provided by a Replacement Supplier.

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

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

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

9.5 If there is an IPR Claim, the Supplier shall indemnify the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

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

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

## 10. Terminating the contract

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

10.2 The Buyer may extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### 10.3 Terminating the contract without a reason

10.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier at least 90 days' notice, and if it is terminated, then Clauses 10.5.2 to 10.5.7 shall apply.

### 10.4 When the Buyer may end the Contract

10.4.1 If any of the following events occur, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:

- 10.4.1.1 there is a Supplier Insolvency Event
- 10.4.1.2 there is a Default that is not corrected in line with an accepted Rectification Plan
- 10.4.1.3 the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- 10.4.1.4 there is any material Default of the Contract
- 10.4.1.5 there is any material Default of any Joint Controller Agreement relating to the Contract
- 10.4.1.6 there is a Default of Clauses 2.6, 9, 14, 15, 27, 32 or Schedule 19 (Cyber Essentials) (where applicable) relating to the Contract
- 10.4.1.7 there is a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels)
- 10.4.1.8 there is a Change of Control of the Supplier which is not pre-approved by the Buyer in writing
- 10.4.1.9 there is a Variation to the Contract which cannot be agreed in accordance with Clause 24 (variation of contract) or resolved in accordance with Clause 34 (Resolving disputes)
- 10.4.1.10 the Buyer discovers that the Supplier was in one of the situations in sections 57 (1) or 57(2) of the Regulations at the time the Contract was awarded
- 10.4.1.11 the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not



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have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations

10.4.1.12 the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them

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

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

10.4.3.1 reject the Rectification Plan or revised Rectification Plan, giving reasons; or

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

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

10.4.4.1 must give reasonable grounds for its decision; and

10.4.4.2 may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.5 If any of the events in sections 73 (1) (a) to (c) of the Regulations occur, the Buyer has the right to immediately terminate the Contract and Clauses 10.5.2 to 10.5.7 shall apply.

## 10.5 Consequences of Termination

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

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

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

10.5.3 Rights accumulated by the Parties are not affected.

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

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

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

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

## 10.6 When the supplier can terminate the contract

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

Reminder Notice.

10.6.2 If a Supplier terminates the Contract under Clause 10.6.1:

10.6.2.1 the Buyer must promptly pay all outstanding Charges incurred to the Supplier

10.6.2.2 the Buyer must pay the Supplier's reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated

10.6.2.3 Clauses 10.5.4 to 10.5.7 shall apply

## **10.7 Termination of Subcontracts**

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

10.7.1 there is a Change of Control of a Subcontractor which is not pre-approved by the Buyer in writing

10.7.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4

10.7.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer

## **10.8 Partially terminating and suspending the contract**

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

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

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

10.8.3.1 reject the Variation; or

10.8.3.2 increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.4 The Buyer may exercise other rights available, or subsequently available to it, which shall be without prejudice to exercise of the Buyer's rights under Clause 10.8.

## **11. Liability**

11.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort,

contract or otherwise) shall be no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Award Form.

11.2 No Party is liable to the other for:

11.2.1 any indirect Losses

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

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

11.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors

11.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees

11.3.3 any liability that cannot be excluded or limited by Law

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

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

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

11.6.1 any liability that is covered by a Required Insurance

11.6.2 Deductions

11.6.3 any items specified in Clause 11.4

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

## 12. Compliance

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

12.2 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.

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

## 13. Insurance

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

## 14. Data protection

- 14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
  - 14.6.1 require the Supplier to restore or procure the restoration of the Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier becomes aware of the issue, whichever is earlier
  - 14.6.2 restore the Government Data itself or using a third party
- 14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless the Buyer is at fault.
- 14.8 The Supplier:
  - 14.8.1 must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request
  - 14.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
  - 14.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
  - 14.8.4 securely erase all Government Data and any copies it holds when requested to do so by the

Buyer unless required by Law to retain it

14.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## **15. Confidentiality**

15.1 Each Party must:

15.1.1 keep all Confidential Information it receives confidential and secure

15.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract

15.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

15.2 Without prejudice to Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

15.2.1 where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure

15.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party

15.2.3 if the information was given to it by a third party without obligation of confidentiality

15.2.4 if the information was in the public domain at the time of the disclosure

15.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information

15.2.6 to its auditors or for the purposes of regulatory requirements

15.2.7 on a confidential basis, to its professional advisers on a need-to-know basis

15.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

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

15.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer

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

15.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its

public functions

15.4.4 where requested by Parliament

15.4.5 under Clauses 4.7 and 16

- 15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.
- 15.6 Transparency Information and any Information which is exempt from disclosure by Clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not do so either.

## **16. Freedom of Information**

- 16.1 The Supplier must inform the Buyer within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give the Buyer full co-operation and a copy of all information in its possession or control in the form that the Buyer requires so the Buyer can:
- 16.2.1 publish the Transparency Information
  - 16.2.2 comply with any Freedom of Information Act (FOIA) request
  - 16.2.3 comply with any Environmental Information Regulations (EIR) request
- 16.3 The Buyer may consult with the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

## **17. Severability**

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

## **18. Entire Agreement**

The provisions incorporated into the Contract constitute the entire agreement between the Parties. The Contract replaces all previous statements, negotiations and agreements between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

## 19. Rights of Third Parties

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

## 20. Force Majeure

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

20.1.1 provides a Force Majeure Notice to the other Party; and

20.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

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

20.3 Where a Party terminates under Clause 20.2:

20.3.3 each party must cover its own Losses; and

20.3.4 Clauses 10.5.2 to 10.5.7 apply

## 21. Relationships created by the contract

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

## 22. Waiver

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

## 23. Transfer and Sub-contracting

23.1 The Supplier shall not assign, transfer, charge, subcontract or in any other way dispose of the contract or any part of it without the Buyer's written consent.

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

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

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

23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff and its Sub-Contractors as if they were its own. If it is appropriate, the Supplier shall provide each Sub-Contractor with a copy of the Contract and shall obtain written confirmation from them that they will provide

the Services fully in accordance with the Contract.

- 23.6 The Supplier shall upon request by the Buyer, provide details of Subcontractors at all levels of the supply chain including:
- 23.6.1 their name
  - 23.6.2 the scope of their appointment
  - 23.6.3 the duration of their appointment
- 23.7 If the Authority has consented to the award of a Sub-Contract, the Supplier shall ensure that:
- 23.7.1 the Sub-Contract contains:
    - 23.7.1.1 a right for the Supplier to terminate the Sub-Contract if the Sub-Contractor does not comply with its legal obligations in connection with Data Protection legislation, environmental, social or labour law; and
    - 23.7.1.2 obligations no less onerous on the Sub-Contractor than those on the Supplier under the Contract in respect of data protection in Schedule 20; and
  - 23.7.2 the Sub-Contractor includes a provision having the same effect as set out in clause 23.7.1 in any Sub-Contract which it awards
  - 23.7.3 copies of each Sub-Contract are sent to the Buyer immediately after their execution.

## **24. Variation of contract**

- 24.1 Either Party may request a Variation to the Contract which is only effective if agreed in writing and signed by the duly authorised representatives of both Parties.
- 24.2 The Supplier must provide an Impact Assessment either:
- 24.2.1 with the Variation Form, where the Supplier requests the Variation
  - 24.2.2 within the time limits included in a Variation Form requested by the Buyer
- 24.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer may either:
- 24.3.1 agree that the Contract continues without the Variation
  - 24.3.2 terminate the affected Contract, unless the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them
  - 24.3.3 refer the Dispute to be resolved in accordance with Clause 34 (Resolving Disputes)
- 24.4 The Buyer shall not be required to accept a Variation request made by the Supplier.
- 24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to occur during the Contract Period the Supplier



must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. The Supplier must also specify if it believes any Variation is required either to the Deliverables, the Charges or the Contract and provide evidence:

24.6.1 that the Supplier has kept costs as low as possible, including Subcontractor costs

24.6.2 of how it has affected the Supplier's costs

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

## **25. Notices and Communications**

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

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

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

## **26. Dealing with claims**

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days from the date it is notified of the Claim.

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

26.2.1 allow the Indemnifier to conduct all negotiations and proceedings in connection with a Claim

26.2.2 give the Indemnifier reasonable assistance with the claim if requested

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which must not be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which is not to be unreasonably withheld or delayed.

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

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier

the lesser of either:

26.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and

26.7.2 the amount the Indemnifier paid the Beneficiary for the Claim

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

27.1 The Supplier must not during any Contract Period:

27.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or

27.1.2 do or allow anything which would cause the Buyer, including any of its employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them

27.2 The Supplier must during the Contract Period:

27.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same

27.2.2 keep full records to show it has complied with its obligations under Clause 27 and give copies to the Buyer on request

27.2.3 if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that it has complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

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

27.3.1 been investigated or prosecuted for an alleged Prohibited Act

27.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency

27.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Contract

27.3.4 suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies the Buyer as required by Clause 27.3, the Supplier must respond promptly to the Buyer's further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

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

27.5.1 Prohibited Act

27.5.2 identity of the Party who it believes has committed the Prohibited Act

27.5.3 action it has decided to take

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

- 28.1 The Supplier must follow all applicable equality Law in the performance of its obligations under the Contract, including:
- 28.1.1 protection against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
  - 28.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law
- 28.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when performing its obligations under the Contract.

## **29. Health and safety**

- 29.1 The Supplier must perform its obligations meeting the requirements of:
- 29.1.1 all applicable Law regarding health and safety
  - 29.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier
- 29.2 The Supplier must as soon as possible notify the Buyer of any health and safety incidents or material hazards it is aware of at the Buyer Premises that relate to the performance of the Contract.

## **30. Compliance with Environmental Policy**

- 30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, provided to the Supplier.
- 30.2 The Supplier shall ensure that Supplier Staff are aware of the Buyer's Environmental Policy and that they comply with it.

## **31. Tax**

- 31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 31.2 Where the Charges payable under the Contract are, or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier

must notify the Buyer of it within 5 Working Days including:

- 31.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant
  - 31.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably require
- 31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
- 31.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions
  - 31.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff
- 31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- 31.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
  - 31.4.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer
  - 31.4.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is not sufficient to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements
  - 31.4.4 the Buyer may supply any information it receives from the Worker to HMRC for revenue collection and management

## **32. Conflict of interest**

- 32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.
- 32.2 The Supplier must promptly notify and provide details to the Buyer if a Conflict of Interest arises or is expected to arise.
- 32.3 The Buyer may terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it considers necessary where there is or may be an actual or potential Conflict of Interest.

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

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

33.1.1 Law

33.1.2 Clause 12.1

33.1.3 Clauses 27 to 32

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

### **34. Resolving disputes**

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute shall, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties may 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 in accordance with Clauses 34.3 to 34.5.

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

34.3.1 determine the Dispute

34.3.2 grant interim remedies

34.3.3 grant any other provisional or protective relief

34.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier is not entitled to suspend the performance of the Contract during any Dispute.

## **35. Governing Law**

This Contract and any issues or claims arising out of, or connected to it, whether contractual or tortious, shall be governed by English law.