

OFFICIAL - SENSITIVE - COMMERCIAL

HMRC Standard Goods and Services Model Contract v1.0

### **SCHEDULE 4.3**

#### **NOTIFIED AND KEY SUB-CONTRACTORS**

**Notified and Key Sub-Contractors**

**1 APPOINTMENT OF SUB-CONTRACTORS**

- 1.1 The Supplier is entitled to enter into Sub contracts with the Subcontractors set out in Annex 1.
- 1.2 Where the Supplier wishes to enter into a Sub-contract or replace a Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
  - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - (c) the proposed Sub-contractor employs unfit persons; and/or
  - (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.2 (*Exclusion of Sub-Contractors*).
- 1.3 In making a request pursuant to Paragraph 1.2, the Supplier shall provide the Authority with the following information about the proposed Sub-contractor:
- (a) its name, registered office and company registration number;
  - (b) a copy of the proposed Sub-contract;
  - (c) the purposes for which the proposed Sub-contractor will be employed, including the scope/description of any services to be provided by the proposed Sub-contractor;
  - (d) if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant service levels;
  - (e) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arms-length" terms;
  - (f) the Sub-contract price expressed as a percentage of the total projected Charges over the Term;
  - (g) (where applicable) the Credit Rating Threshold of the Subcontractor; and
  - (h) any further information reasonably requested by the Authority;.
- 1.4 The Supplier shall record details of all Sub-contractors that it appoints from time to time in Annex 1 (Notified Sub-contractors and Key-subcontractors), including whether

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or not the Sub-contract is a Third Party Contract and shall promptly provide the Authority with an updated copy.

- 1.5 The Supplier shall notify the Authority if and to the extent to which any Sub-contractor has or intends to sub-contract to a third party any of the services it provides to the Supplier under the terms of the Sub-contract. Upon such notification, the Authority may request, and the Supplier shall procure that the Key Sub-contractor provides to the Authority, a copy of the contract between the Key Sub-contractor and the third party.

## 2 SUB-CONTRACTS

2.1 The Supplier shall ensure that each Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
  - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
  - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(k) (*Services*);
  - (iv) the keeping of records in respect of the services being provided under the Sub-contract, including the maintenance of Open Book Data;
  - (v) the conduct of Audits set out in Clause 12.1 to Clause 12.12 (*Records, Reports, Audits & Open Book Data*);
  - (vi) the reporting requirement set out in Paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
  - (vii) the tax compliance requirements set out in Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*);

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- (viii) the use of off-shore tax structures set out in Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
  - (ix) the disclosure of Confidential Information set out in Clause 21.3 (Confidentiality); and
  - (x) the slavery and human trafficking compliance requirements set out in Clause 35.5 (Modern Slavery Act).
  - (k) provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement; and
  - (l) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*).
- 2.2 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:
- (a) a copy of any Sub-contract; and
  - (b) any further information relating to that Sub-contract as reasonably requested by the Authority.

### 3 KEY SUB-CONTRACTS

- 3.1 Without prejudice and in addition to the provision in Paragraph 2.1 to 2.2, the Supplier shall ensure that each Key Sub-contract shall include a provision requiring all Key Sub-contractors to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
    - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
    - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
  - (b) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
  - (c) co-operate with the Supplier and the Authority in order to give full effect to the

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provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

#### **4 SUPPLY CHAIN PROTECTION**

- 4.1 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- (a) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
  - (b) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;
  - (c) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
  - (d) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
  - (e) granting the Supplier a right to terminate the Sub-contract if the relevant Sub-contractor fails to comply, in the performance of its Sub-contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub-contractor includes a provision having the same effect in any sub-contract which it awards;
  - (f) requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 1.1(b)(vii) of Schedule 8.2 (Reports and Records); and
  - (g) requiring the Sub-contractor to include a clause to the same effect as this Paragraph 4.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 4.2 The Supplier shall, and shall ensure that its Sub-Contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Customer may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub-Contractors for the purposes of monitoring and/or better understanding of the Services.

**5 AMENDMENT OF SUB-CONTRACTS**

- 5.1 The Supplier shall not terminate or materially amend the terms of any Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

**6 RETENTION OF LEGAL OBLIGATIONS**

- 6.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Schedule the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.
- 6.2 In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

**7 IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN**

- 7.1 The following definitions shall apply in this Paragraph 7.1:

“**Contracts Finder**” means the Government’s publishing portal for public sector procurement opportunities;

“**SME**” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; and

“**VCSE**” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

- 7.2 If the contract value per annum (averaged over the life of the contract), as advertised by the Authority as part of the procurement process, is in excess of £5,000,000, the Supplier shall:

- (a) subject to Paragraph 7.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;
- (b) within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
- (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

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- (d) provide reports on the information at Paragraph 7.2(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
  - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 7.3 Each advert referred to at Paragraph 7.2 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 7.4 The obligation at Paragraph 7.2 shall only apply in respect of subcontract opportunities arising after the contract award date.
- 7.5 Notwithstanding Paragraph 7.1 to Paragraph 7.4 above, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

## **8 MANAGEMENT CHARGES AND INFORMATION**

- 8.1 This Paragraph 8 applies if the contract value per annum (averaged over the life of the contract), as advertised by the Authority as part of the procurement process, is in excess of £5,000,000.
- 8.2 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) reports to the Authority at the Authority's request which incorporate the data described in the MI Reporting Template, as defined below, ("**SME Management Information Reports**") which is:
  - (a) the total contract revenue received directly on a specific contract;
  - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
  - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 8.3 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template (as defined below) and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in Annex 2 to this Schedule and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version ("**MI Reporting Template**"). The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 8.4 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

**ANNEX 1: NOTIFIED SUB-CONTRACTORS AND KEY SUB-CONTRACTORS****1 NOTIFIED SUB-CONTRACTORS AND KEY SUB-CONTRACTORS**

- 1.1 In accordance with this Schedule, the Supplier is entitled to sub-contract its obligations under this Agreement to the Sub-Contractors and Key Sub-contractors listed in the table below.
- 1.2 The Parties agree that they will update this Schedule periodically to record any Sub-Contractors and Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

**Notified Key Sub-Contractors - Redacted**

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold	Third Party Contract?



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**Notified Sub-Contractors - Redacted**

Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold	Third Party Contract?

**ANNEX 2: MI REPORTING TEMPLATE**