

- 12.4. The parties shall both comply with the Data Protection Laws.
- 12.5. Each party shall, at the other's request, provide the party with reasonable information and assistance in relation to the production of a Data Protection Impact Assessment.
- 12.6. Each party shall provide all reasonable assistance to the other if the outcome of the Data Protection Impact Assessment leads a party to consult the Information Commissioner's Office.
- 12.7. Each party shall ensure that it processes the Personal Data fairly and lawfully.
- 12.8. The Supplier shall, in respect of their Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Laws, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 13 of the UK GDPR including:
  - 12.8.1. If the Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfers; and
  - 12.8.2. If the Personal Data will be transferred outside the UK, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Controller to enable the Data Subject to understand the purpose and risks of such transfer.
- 12.9. The Supplier undertakes to inform the Data Subjects, in accordance with the Data Protection Laws, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by Article 14 of the UK GDPR including:
  - 12.9.1. If the Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer; and
  - 12.9.2. If the Personal Data will be transferred outside the UK pursuant to clauses 12.10 to 12.12 (inclusive) in of this agreement, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the controller to enable the Data Subject to understand the purpose and risks of such transfer.
- 12.10. For the purposes of clauses 12.10 to 12.12 inclusive, transfers of Personal Data shall mean any sharing of Personal Data by the Supplier with a third party, and shall include, but is not limited to, the following:
  - 12.10.1. Subcontracting the processing of the Personal Data;
  - 12.10.2. Granting a third-party controller access to the Personal Data.
- 12.11. If the Supplier appoints a third-party Processor to process the Personal Data it shall comply with Article 28 and Article 30 of the UK GDPR and shall remain liable to the Supplier for the acts and/or omissions of the Processor.
- 12.12. The Supplier may not transfer the Personal Data to a third party located outside the UK unless it:
  - 12.12.1. Complies with the provisions of Articles 26 of the UK GDPR (in the event the third party is a joint controller); and,
  - 12.12.2. Ensures that: (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or (iii) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.
- 12.13. The Customer shall provide the Personal Data to the Supplier by using secure methods as agreed and set out in Annex 5.
- 12.14. The parties shall each comply with their obligation to report a Personal Data breach to the appropriate Supervisory Authority and, where applicable, Data Subjects under Article 33 of the UK GDPR.

- 12.15. The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data breach.
- 12.16. In the event of a dispute, claim or request brought by a Data Subject or the Supervisory Authority concerning the processing of the Personal Data against either or both parties, the parties may, where relevant, inform each other's Data Protection Officer about any such disputes, claims or requests, as listed in the table at paragraph 6 of the Award Form.

### **13. Transparency and Freedom of Information**

- 13.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the **"Transparency Information"**) is not Confidential Information.
- 13.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) (**"Transparency Report"**). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 13.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.
- 13.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 13.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 13.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 13.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 13.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
  - 13.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 13.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

13.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.

- 13.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## **14. Liability**

- 14.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2. Subject always to clauses 14.4 and 14.5:
- 14.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap; and
- 14.2.2. except in the case of claims arising under clauses 9.4 and 19.3, in no event shall either Party be liable to the other Party for any:
- a) loss of profits;
  - b) loss of business;
  - c) loss of revenue;
  - d) loss of or damage to goodwill; and/or
  - e) any indirect, special or consequential loss or damage.
- 14.3. The Customer's maximum aggregate liability under this Agreement shall in no event exceed a sum equal to 100% of the Charges paid or payable under the Agreement to the Supplier in the 12 months immediately prior to the breach giving rise to the liability.
- 14.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 14.4.1. death or personal injury caused by its negligence or that of its Staff;
- 14.4.2. fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.4.3. any other matter which, by law, may not be excluded or limited.
- 14.5. The Supplier's liability under the indemnities in clauses 9.4 and 19.3 shall be unlimited.
- 14.6. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

## **15. Insurance**

- 15.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

## **16. Force Majeure**

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **17. Termination**

- 17.1. The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 17.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
  - 17.2.1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 17.2.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as 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 Agreement;
  - 17.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 17.2.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;
  - 17.2.5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 18; or
  - 17.2.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.
- 17.3. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 17.2.4 or any potential such change of Control.
- 17.4. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 17.5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.7, 6.8, 7, 9, 10.2, 11, 12, 13, 17.6, 18.4.3, 19.3, 20 and 21.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.6. Upon termination or expiry of the Agreement, the Supplier shall:
  - 17.6.1. give all reasonable assistance to the Customer and any incoming supplier of the Services; and
  - 17.6.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **18. Compliance**



- 18.1. The Supplier shall, and shall procure that its Sub-contractors and any person under its control, comply with all the Customer policies specified in the Award Letter.
- 18.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.3. The Supplier shall:
  - 18.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and
  - 18.3.2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.4. The Supplier shall:
  - 18.4.1. comply, and procure that all Staff comply with all CSR Laws;
  - 18.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;
  - 18.4.3. adopt, and procure that its Sub-contractors and any person under its control adopt, written corporate and social responsibility policies that set out values for relevant activity and behaviour equivalent to those set out in the CSR Policies (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment of the Supplier's business activities); and
  - 18.4.4. notify the Customer in the event that the Supplier's or its Sub-contractors' corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.
- 18.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.
- 18.6. The Customer may, where it deems appropriate (including but not limited to circumstances where a successor or related project involves a procurement process governed by the Public Contracts Regulations 2015), require the Supplier to put in place steps to ensure due probity including the erection of ethical walls and obligations to provide specific information. In such circumstances, the Supplier shall comply with any such measures reasonably proposed by the Customer.

## **19. Prevention of Fraud and Corruption**

- 19.1. The Supplier shall not offer, give, or agree to give anything, to any person 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 Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:
  - 19.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any

additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

19.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **20. Dispute Resolution**

- 20.1. If there is a dispute in relation to this Agreement, the Party raising the dispute shall serve a notice on the other Party in writing ("**Dispute Notice**") setting out the details of the dispute. The Parties shall then attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 20.2. If the dispute cannot be resolved by the Parties within 30 days of the date of the Dispute Notice (being the date it was received) either Party may escalate the dispute to each of the relevant Parties' Senior Management. If such Senior Management fail to resolve the dispute within 30 days then any Party may exercise any remedy it has under applicable law. For the avoidance of doubt, neither Party shall be prevented by this Dispute Resolution process from commencing court proceedings more quickly if it is necessary to comply with a limitation period or if it is necessary to seek an urgent remedy.
- 20.3. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to any dispute resolution process and the Supplier shall, and shall procure that the Staff shall comply fully with the requirements of this Agreement at all times.

## **21. General**

- 21.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 21.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3. Subject to clause 22.1, the Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5. Any waiver or relaxation, either partly or wholly of any of the terms and conditions of the Agreement, shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are

cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- 21.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **22. Notices**

- 22.1. Any notice to be given under the Agreement shall be in writing and shall include the Agreement reference and title. All notices must be served by email, and, subject to clause 22.2, may in addition be served by personal delivery or first class recorded post. All notices must be served using the addresses of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 22.2. Notices under clauses 15 (Force Majeure) and 17 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 22.1.
- 22.3. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

## **23. Security of Supplier Staff**

- 23.1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.
- 23.2. The Supplier shall agree on a case by case basis which Supplier Staff roles which require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 23.3. The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data, or from accessing Customer premises, except where agreed with the Customer in writing.
- 23.4. All Supplier Staff that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.
- 23.5. Where Supplier Staff are granted the ability to access Customer Data or systems holding Customer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.

## **24. Publicity and Branding**

- 24.1. The Supplier shall not:
- 24.1.1. make any press announcements or publicise this Agreement or its contents in any way;  
or
- 24.1.2. use the Customer's name or brand in any promotion or marketing or announcement of orders,  
without the prior written consent of the Customer.