**Award Form**

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

|  |  |  |
| --- | --- | --- |
|  | **Buyer** | Food Standards Agency (the Buyer). Its offices are on: Clive House 70 Petty FranceLondonSW1H 9EX |
|  | **Supplier** |

|  |  |
| --- | --- |
| Name:  | ***[Insert name (registered name if registered)]*** |
| Address:  | ***[Insert address registered address if registered]*** |
| Registration number:  | ***[Insert registration number if registered]*** |
| SID4GOV ID: | ***[Insert SID4GOV ID if you have one]*** |

 |
|  | **Contract** | This Contract between the Buyer and the Supplier is for the supply of Deliverables.This opportunity is advertised in the Contract Notice in Find A Tender, reference ***[Insert reference number]*** (FTS Contract Notice). |
|  | **Contract reference** | ***[Insert Buyer contract reference here, if any]*** |
|  | **Deliverables**  | ***[Insert general description of the Deliverables]***See Schedule 2 (Specification) for further details. |
|  | **Buyer Cause** | **Not applicable** |
|  | **Collaborative working principles** | The Collaborative Working Principles do not apply to this Contract.  |
|  | **Financial Transparency Objectives** | The Financial Transparency Objectives do not apply to this ContractSee Clause 6.3 for further details. |
|  | **Start Date** | *[****Insert*** *Day Month Year]****[Guidance: insert a condition precedent if needed e.g. provision of a signed Guarantee by a backstop date]*** |
|  | **Expiry Date** | *[****Insert*** *Day Month Year]* |
|  | **Extension Period** | *[****Insert*** Not applicable ***or insert detail about extensions of this Contract]***[Further period up to *[****Insert*** *Day Month Year* ***or describe duration]***[Extension exercised where the Buyer gives the Supplier no less than [6 months] written notice before the Contract expires]  |
|  | **Ending the Contract without a reason** | The Buyer shall be able to terminate the Contract in accordance with Clause 14.3. [Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be 90 days. |
|  | **Incorporated Terms** (together these documents form the **"the Contract"**) | The following documents are incorporated into the Contract. Where numbers are missing we are not using these Schedules. If the documents conflict, the following order of precedence applies:1. This Award Form
2. Any Special Terms (see **Section 14 (Special Terms)** in this Award Form)
3. Core Terms
4. Schedule 36 (Intellectual Property Rights)
5. Schedule 1 (Definitions)
6. Schedule 6 (Transparency Reports)
7. Schedule 20 (Processing Data)
8. The following Schedules (in equal order of precedence):
	1. Schedule 2 (Specification)
	2. Schedule 3 (Charges)
	3. Schedule 5 (Commercially Sensitive Information)
	4. Schedule 7 (Staff Transfer) – Not Used
	5. Schedule 8 (Implementation Plan & Testing) – Not Used
	6. Schedule 9 (Installation Works) – Not Used
	7. Schedule 10 (Service Levels) – Not Used
	8. Schedule 11 (Continuous Improvement) – Not Used
	9. Schedule 12 (Benchmarking) Not Used
	10. Schedule 13 (Contract Management)
	11. Schedule 14 (Business Continuity and Disaster Recovery) Not Used
	12. Schedule 15 (Minimum Standards of Reliability) – Not Used
	13. Schedule 16 (Security)
	14. Schedule 17 (Service Recipients) – Not Used
	15. Schedule 18 (Supply Chain Visibility) – Not Used
	16. Schedule 19 (Cyber Essentials Scheme) – Not Used
	17. Schedule 21 (Variation Form)
	18. Schedule 22 (Insurance Requirements)
	19. Schedule 23 (Guarantee) – Not Used
	20. Schedule 24 (Financial Difficulties) – Not Used
	21. Schedule 25 (Rectification Plan) – Not Used
	22. Schedule 26 (Sustainability)
	23. Schedule 27 (Key Subcontractors)
	24. Schedule 28 (ICT Services) – Not Used
	25. Schedule 28A (Agile Development Additional Terms) – Not Used
	26. Schedule 29 (Key Supplier Staff)
	27. Schedule 30 (Exit Management)
	28. Schedule 32 (Background Checks)
	29. Schedule 33 (Scottish Law) – Not Used
	30. Schedule 34 (Northern Ireland Law) – Not Used
	31. Schedule 35 (Lease Terms) – Not Used
	32. Schedule 37 (Corporate Resolution Planning Information) – Not used
9. Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that aspect of the Tender will take precedence over the documents above.
 |
| 1.
 | **Special Terms** | Special Term 1 - ***[Insert terms to revise or supplement Core Terms or Schedules, or enter ‘N/A’ and delete the extra rows below]****[Special Term 2 - ]* |
| *[Special Term 2 - ]* |
| *[Special Term 3 - ]* |
|  | **Sustainability**  | The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).  |
|  | **Buyer’s Environmental Policy**  | [***FSA Environmental Sustainability Strategy***](https://www.food.gov.uk/about-us/fsa-environmental-sustainability-strategy) |
|  | **Social Value Commitment** | The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports as set out in Schedule 26 (Sustainability)  |
|  | **Buyer’s Security Policy** | Schedule 16 (Security) |
|  | **Commercially Sensitive Information** | Supplier’s Commercially Sensitive Information**:** Schedule 5 (Commercially Sensitive Information) |
|  | **Charges** | ***[Insert information about the Charges]***Details in Schedule 3 (Charges) |
|  | **Reimbursable expenses** | Recoverable as set out in Schedule 3 (Charges) |
|  | **Payment method** | All invoices must be sent, quoting a valid purchase order number (PO Number), to: Accounts-Payable.fsa@gov.sscl.comWithin 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. |
|  | **Service Levels** | Not applicable |
|  | **Insurance** | Details in Annex of Schedule 22 (Insurance Requirements). |
| 1.
 | **Liability** | [In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than [the greater of £[**5 million**] or [**150**]% of the Estimated Yearly Charges]In accordance with Clause 15.5, the Supplier’s total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being £10million |
|  | **Cyber Essentials Certification** | 1. [[***Insert*** Not required]
2. [or ***Insert*** Cyber Essentials Scheme [Basic / Plus] Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)]
 |
|  | **Progress Meetings and Progress Reports** | 1. The Supplier shall attend Progress Meetings with the Buyer every [   ]
2. The Supplier shall provide the Buyer with Progress Reports every [   ]
 |
|  | **Guarantee** | Not applicable |
|  | **Virtual Library** | Not applicable] |
|  | **Supplier** **Contract****Manager** | ***[Insert name]******[Insert job title]******[Insert email address]******[Insert phone number]*** |
|  | **Supplier Authorised Representative** | ***[Insert name]******[Insert job title]******[Insert email address]******[Insert phone number]*** |
|  | **Supplier Compliance Officer** | Not Used |
|  | **Supplier Data Protection Officer** | ***[Insert name]******[Insert job title]******[Insert email address]******[Insert phone number]*** |
|  | **Supplier Marketing Contact** | Not used |
|  | **Key Subcontractors** | **Key Subcontractor 1**Name (Registered name if registered): ***[insert name]***Registration number (if registered): ***[insert number]***Role of Subcontractor: ***[insert role]******[Guidance: copy above lines as needed]*** |
|  | **Buyer Authorised Representative** | ***[Insert name]******[Insert job title]******[Insert email address]******[Insert phone number]*** |

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

18 June 2020 D2V1

**Schedule 36 (Intellectual Property Rights)**

**Intellectual Property Rights**

Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party’s IPR, including any use of the other Party’s names, logos or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.

* 1. Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
	2. **Licences granted by the Supplier: Supplier Existing IPR**
		1. Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 1.3.2.
		2. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:
			1. or any End User to use and receive the Deliverables; or
			2. to use, sub-licence or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of the Buyer’s (or, if the Buyer is a Public Sector Body, any other Public Sector Body’s) business or function.

* 1. **Licences granted by the Buyer and New IPR**
		1. Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations during the Contract Period.
		2. Where a Party acquires ownership of IPR 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.
		3. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.
	2. **Open Licence Publication**
		1. Subject to Paragraph 1.5.4, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.
		2. Subject to Paragraph 1.5.4, the Supplier hereby warrants that the New IPR Items are suitable for release under Open Licence.
		3. 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”).
		4. The Supplier may within 15 days of a Buyer Open Licence Request under Paragraph 1.5.3 request in writing that the Buyer excludes all or part of:
			1. the New IPR; or
			2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 1.5.3

from Open Licence publication.

* + 1. Any decision to Approve any such request from the Supplier pursuant to Paragraph 1.5.4 shall be at the Buyer’s sole discretion, not to be unreasonably withheld, delayed or conditioned.
		2. Subject to Clause 15 of the Core Terms, 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.
	1. **Third Party IPR**
		1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 1.6.3. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.6.3 in respect of any Third Party IPR the Supplier shall:
			1. notify the Buyer in writing; and
			2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.
		2. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this 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.
		3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.
	2. **Termination of licences**
		1. The Supplier Existing IPR Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.6 shall survive the Expiry Date and termination of this Contract.
		2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
		3. Any licence granted to the Supplier pursuant to Paragraph 1.4 (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall:
			1. immediately cease all use of the Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);
			2. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and
			3. ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.

**Schedule 1 (Definitions)**

**Definitions**

* 1. In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
	2. If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
	3. In the Contract, unless the context otherwise requires:
		1. the singular includes the plural and vice versa;
		2. reference to a gender includes the other gender and the neuter;
		3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
		4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
		5. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
		6. references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
		7. references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings"** as references to obligations under the Contract;
		8. references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
		9. references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
		10. references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
		11. the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
		12. where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
		13. Any reference in this Contract 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):
1. 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

(ii) 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.

* 1. In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **"Achieve"** | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "**Achieved**", "**Achieving**" and "**Achievement**" shall be construed accordingly; |
| **“Additional FDE Group Member”** | means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties); |
| **"Affected Party"** | the party seeking to claim relief in respect of a Force Majeure Event; |
| **"Affiliates"** | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **"Allowable Assumptions"** | means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges); |
| **"Annex"** | extra information which supports a Schedule; |
| **"Approval"** | the prior written consent of the Buyer and "**Approve**" and "**Approved**" shall be construed accordingly; |
| **“Associates”** | means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles; |
| **"Audit"** | the Buyer’s right to:1. verify the integrity and content of any Financial Report;
2. verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract);
3. verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
4. verify the Open Book Data;
5. verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;
6. identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), 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;
7. identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
8. 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;
9. review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;
10. 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;
11. 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;
 |
| **"Auditor"** | 1. the Buyer’s internal and external auditors;
2. the Buyer’s statutory or regulatory auditors;
3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
4. HM Treasury or the Cabinet Office;
5. any party formally appointed by the Buyer to carry out audit or similar review functions; and
6. successors or assigns of any of the above;
 |
| **"Award Form"** | the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer; |
| **“Beneficiary”** | a Party having (or claiming to have) the benefit of an indemnity under this Contract; |
| **"Buyer"** | the public sector purchaser identified as such in the Order Form; |
| **"Buyer Assets"** | the Buyer’s infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract; |
| **"Buyer Authorised Representative"** | the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form; |
| **"Buyer Cause"** | has the meaning given to it in the Award Form; |
| **"Buyer Data"** | means 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 Buyer’s or End User’s Confidential Information, and which:1. are supplied to the Supplier by or on behalf of the Buyer, or End User; or
2. the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
3. any Personal Data for which the Buyer or End User is the Controller;
 |
| **"Buyer Existing IPR"** | means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Central Government Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise) |
| **"Buyer Premises"** | premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them); |
| **"Buyer Third Party"** | means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time; |
| **"Buyer's Confidential Information"** | 1. all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);
2. any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer’s attention or into the Buyer’s possession in connection with the Contract; and

information derived from any of the above; |
| **"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:1. Government Department;
2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
3. Non-Ministerial Department; or
4. Executive Agency;
 |
| **"Change in Law"** | any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date; |
| **"Change of Control"** | a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| **"Charges"** | the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Deductions; |
| **"Claim"** | any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract; |
| **"Commercially Sensitive Information"** | the Confidential Information listed in the Award Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss; |
| **"Comparable Supply"** | the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables; |
| **"Compliance Officer"** | the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations; |
| **"Confidential Information"** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as **"confidential"**) or which ought reasonably to be considered to be confidential; |
| **"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, in the reasonable opinion of the Buyer; |
| **"Contract"** | the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form; |
| **"Contract Period"** | the term of the Contract from the earlier of the:1. Start Date; or
2. the Effective Date
3. until the End Date;
 |
| **"Contract Value"** | the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier; |
| **"Contract Year"** | a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof; |
| **"Control"** | control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; |
| **"Controller"** | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **"Core Terms"** | the Buyer’s terms and conditions which apply to and comprise one part of the Contract set out in the document called "Core Terms"; |
| **"Costs"** | the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:1. the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:
	* + - 1. base salary paid to the Supplier Staff;
				2. employer’s National Insurance contributions;
				3. pension contributions;
				4. car allowances;
				5. any other contractual employment benefits;
				6. staff training;
				7. work place accommodation;
				8. work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and
				9. reasonable recruitment costs, as agreed with the Buyer;
2. costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and
4. Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;

but excluding:1. Overhead;
2. financing or similar costs;
3. maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
4. taxation;
5. fines and penalties;
6. amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and
7. non-cash items (including depreciation, amortisation, impairments and movements in provisions);
 |
|  |  |
| **"Critical Service Level Failure"** | has the meaning given to it in the Award Form; |
| **"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 government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **"Crown IPR"** | means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise); |
| **"CRTPA"** | the Contract Rights of Third Parties Act 1999; |
| **"Data Protection Impact Assessment"** | an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data; |
| **"Data Protection Legislation"** | (i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;  |
| **"Data Protection Liability Cap"** | has the meaning given to it in the Award 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; |
| **"Deductions"** | all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract; |
| **"Default"** | any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer; |
| **"Delay Payments"** | the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan; |
| **"Deliverables"** | Goods and/or Services that may be ordered under the Contract including the Documentation;  |
| **"Delivery"** | delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "**Deliver**" and "**Delivered**" shall be construed accordingly; |
| **“Dependent Parent Undertaking”** | means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract; |
| **"Disaster"** | the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the **"Disaster Period**");  |
| **"Disclosing Party"** | the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential); |
| **"Dispute"** | any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;  |
| **"Dispute Resolution Procedure"** | the dispute resolution procedure set out in Clause 39 (Resolving disputes); |
| **"Documentation"** | descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as:1. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables
2. is required by the Supplier in order to provide the Deliverables; and/or
3. has been or shall be generated for the purpose of providing the Deliverables;
 |
| **"DOTAS"** | the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions; |
| **"DPA 2018"** | The Data Protection Act 2018 |
| **"Due Diligence Information"** | any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date; |
| **"Effective Date"** | the date on which the final Party has signed the Contract; |
| **"EIR"** | the Environmental Information Regulations 2004; |
| **"Employment Regulations"** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced; |
| **"End Date"**  | the earlier of: 1. the Expiry Date as extended by the Buyer under Clause 14.2; or
2. if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;
 |
| **"End User"** | means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user); |
| **"Environmental Policy"** | to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer; |
| **"Equality and Human Rights Commission"** | the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time; |
| **"Escalation Meeting"** | means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;  |
| **"Estimated Year 1 Charges"** | the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form; |
| **"Estimated Yearly Charges"** | means for the purposes of calculating each Party’s annual liability under Clause 15.1:1. in the first Contract Year, the Estimated Year 1 Charges; or
2. in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or
3. after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
 |
| **"EU"** | 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 IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise); |
| **"Exit Plan"** | has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan); |
| **"Expiry Date"** | the date of the end of the Contract as stated in the Award Form;  |
| **“Extension Period”** | such period or periods beyond which the Initial Period may be extended, specified in the Award Form; |
| **“FDE Group”** | the Supplier and any Additional FDE Group Member; |
| **"Financial Distress Event"** | The occurrence of one or more the following events:1. the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;
2. any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;
3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;
4. any FDE Group entity commits a material breach of covenant to its lenders;
5. a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;
6. any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
7. any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
8. the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity’s going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
9. any of the following:

any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity’s liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m; non-payment by any FDE Group entity of any financial indebtedness; any financial indebtedness of any FDE Group entity becoming due as a result of an event of default; the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity, in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with the Contract; or1. any [one] of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold.
 |
| **"Financial Report"** | a report provided by the Supplier to the Buyer that:1. to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
2. to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);
3. is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of this Contract; and
4. is certified by the Supplier's Chief Financial Officer or Director of Finance;
 |
| **"Financial Transparency Objectives"** | means:1. the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;
2. the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
3. the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;
4. the Parties being able to review, address issues with and re‑forecast progress in relation to the provision of the Services;
5. the Parties challenging each other with ideas for efficiency and improvements; and
6. enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;
 |
| **"FOIA"** | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time 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:1. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;
2. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
3. acts of a Crown Body, local government or regulatory bodies;
4. fire, flood or any disaster; or
5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
	* + - 1. 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;
				2. 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
				3. 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; |
| **"Force Majeure Notice"** | a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; |
|  |  |
| **"General Anti-Abuse Rule"** | 1. the legislation in Part 5 of the Finance Act 2013 and; and
2. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
 |
| **"General Change in Law"** | a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; |
| **"Goods"** | goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form; |
| **"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 business sector; |
| **"Government"** | the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| **"Government Data"** | 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:1. are supplied to the Supplier by or on behalf of the Buyer; or
2. the Supplier is required to generate, process, store or transmit pursuant to the Contract;
 |
| **"Government Procurement Card"** | the Government’s preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2; |
| **"Guarantor"** | the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract; |
| **"Halifax Abuse Principle"** | the principle explained in the CJEU Case C-255/02 Halifax and others; |
| **"HMRC"** | Her Majesty’s Revenue and Customs; |
| **"ICT Policy"** | the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure; |
| **"Impact Assessment"** | an assessment of the impact of a Variation request by the Buyer completed in good faith, including:1. details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;
2. details of the cost of implementing the proposed Variation;
3. details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
4. a timetable for the implementation, together with any proposals for the testing of the Variation; and
5. such other information as the Buyer may reasonably request in (or in response to) the Variation request;
 |
| **"Implementation Plan"** | the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer; |
| **"Incorporated Terms"** | the contractual terms applicable to the Contract specified in the Award Form; |
| **"Indemnifier"** | a Party from whom an indemnity is sought under this Contract; |
| **"Independent Controller"** | a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data; |
| **"Indexation"** | the adjustment of an amount or sum in accordance with the Award Form; |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| **"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;  |
| **"Initial Period"** | the initial term of the Contract specified in the Award Form; |
| **"Insolvency Event"** | 1. with respect to any person, means:
2. that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
	1. (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
	2. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
3. that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
4. another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
5. a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days;
6. that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
7. where that person is a company, an LLP or a partnership:
	1. a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
	2. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
	3. (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
	4. (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or
8. any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
 |
| **"Installation Works"** | all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Contract; |
| **"Intellectual Property Rights" or "IPR"** | 1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
3. all other rights having equivalent or similar effect in any country or jurisdiction;
 |
| **"Invoicing Address"** | the address to which the Supplier shall Invoice the Buyer as specified in the Award Form; |
| **“IP Completion Day”** | has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020; |
| **"IPR Claim"** | any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract; |
| **"IR35"** | the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <https://www.gov.uk/guidance/ir35-find-out-if-it-applies>; |
| **"Joint Controller Agreement"** | the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data); |
| **"Joint Control"** | where two or more Controllers jointly determine the purposes and means of Processing; |
| **"Joint Controllers"** | where two or more Controllers jointly determine the purposes and means of Processing; |
| **"Key Staff"** | the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);  |
| **"Key Sub-Contract"** | each Sub-Contract with a Key Subcontractor; |
| **"Key Subcontractor"** | any Subcontractor:1. which is relied upon to deliver any work package within the Deliverables in their entirety; and/or
2. which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or
3. with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract,

and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form; |
| **"Know-How"** | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party’s possession before the Start Date; |
| **"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; |
| **"Law Enforcement Processing"** | processing under Part 3 of the DPA 2018; |
| **"Losses"** | all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "**Loss**" shall be interpreted accordingly; |
|  |  |
| **"Marketing Contact"** | shall be the person identified in the Award Form; |
| **"Milestone"** | an event or task described in the Implementation Plan; |
| **"Milestone Date"** | the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved; |
| **"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"** | 1. IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or
2. IPR in or arising as a result of the performance of the Supplier’s obligations under the Contract and all updates and amendments to the same;

but shall not include the Supplier’s Existing IPR. Unless otherwise agreed in writing, any New IPR should be recorded in Schedule 36 and updated regularly; |
| **"New IPR Item"** | means a deliverable, document, product or other item within which New IPR subsists; |
| **"Notifiable Default"** | means:1. the Supplier commits a material Default; and/or
2. the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;
 |
| **"Occasion of Tax Non –Compliance"** | where: 1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
	* + - 1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
				2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
2. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;
 |
| **"Open Book Data"** | complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:1. the Supplier’s Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;
2. operating expenditure relating to the provision of the Deliverables including an analysis showing:
	* + - 1. the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
				2. manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
				3. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
				4. Reimbursable Expenses, if allowed under the Award Form;
3. Overheads;
4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
5. the Supplier Profit achieved over the Contract Period and on an annual basis;
6. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
7. an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and
8. the actual Costs profile for each Service Period;
 |
| **"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>; |
| **"Open Licence Publication Material"** | means items created pursuant to the Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence; |
| **"Overhead"** | those amounts which are intended to recover a proportion of the Supplier’s or the Key Subcontractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs"; |
| **“Parent Undertaking”** | has the meaning set out in section 1162 of the Companies Act 2006; |
| **"Parliament"** | takes its natural meaning as interpreted by Law; |
| **"Party"** | the Buyer or the Supplier and "**Parties**" shall mean both of them where the context permits; |
| **"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; |
| **"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 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>; |
| **"Processing"** | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| **"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; |
| **"Progress Meeting"** | a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;  |
| **"Progress Report"** | a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates; |
| **"Prohibited Acts"** | 1. to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:
	* + - 1. induce that person to perform improperly a relevant function or activity; or
				2. reward that person for improper performance of a relevant function or activity;
2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or
3. committing any offence:
	* + - 1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
				2. under legislation or common law concerning fraudulent acts; or
				3. defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or
4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
 |
| **"Protective Measures"** | technical and organisational measures which must take account of:1. the nature of the data to be protected
2. harm that might result from Data Loss Event;
3. state of technological development
4. 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; |
| **"Public Sector Body "** | means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service; |
|  |  |
| **"Recall"** | a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance; |
| **"Recipient Party"** | the Party which receives or obtains directly or indirectly Confidential Information; |
| **"Rectification Plan"** | the Supplier’s plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:1. full details of the Notifiable Default that has occurred, including a root cause analysis;
2. the actual or anticipated effect of the Notifiable Default; and
3. the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
 |
| **"Rectification Plan Process"** | the process set out in Clause 11;  |
| **"Regulations"** | the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires); |
| **"Reimbursable Expenses"** | the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:1. travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and
2. subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
 |
| **"Relevant Requirements"** | all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010; |
| **"Relevant Tax Authority"** | HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established; |
| **"Reminder Notice"** | a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;  |
| **"Replacement Deliverables"** | any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party; |
| **"Replacement Supplier"** | any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer; |
| **"Request For Information"** | a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs; |
| **"Required Action"** | means the action the Buyer will take and what Deliverables it will control during the Step-In Process; |
| **"Required Insurances"** | the insurances required by Schedule 22 (Insurance Requirements);  |
| **"Satisfaction Certificate"** | the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test; |
| **"Schedules"** | any attachment to the Contract which contains important information specific to each aspect of buying and selling; |
| **"Security Management Plan"** | the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);  |
| **"Security Policy"** | the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier; |
| **"Serious Fraud Office"** | the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time; |
| **"Service Credits"** | any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels; |
| **"Service Levels"** | any service levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule); |
| **"Service Period"** | has the meaning given to it in the Award Form; |
| **"Services"** | services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form; |
| **"Sites"** | any premises (including the Buyer Premises, the Supplier’s premises or third party premises) from, to or at which:1. the Deliverables are (or are to be) provided; or
2. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
3. those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)
 |
| **"SME"** | 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 enterprises; |
| **“Social Value”** | the additional social benefits that can be achieved in the delivery of the Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used) |
| **“Social Value KPIs”** | the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used |
| **“Social Value Report”** | the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used |
| **"Special Terms"** | any additional terms and conditions set out in the Award Form incorporated into the Contract; |
| **"Special IPR Terms"** | any additional terms and conditions relating to IPR set out in the Award Form incorporated into the Contract; |
| **"Specific Change in Law"** | a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date; |
| **"Specification"** | the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form; |
| **"Standards"** | any:1. standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
2. standards detailed in the specification in Schedule 2 (Specification);
3. standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time;
4. relevant Government codes of practice and guidance applicable from time to time;
 |
| **"Start Date"** | the date specified on the Award Form; |
| **"Step-In Process"** | the process set out in Clause 13; |
| **"Step-In Trigger Event"** | means:1. the Supplier's level of performance constituting a Critical Service Level Failure;
2. the Supplier committing a material Default which is irremediable;
3. where a right of termination is expressly reserved in this Contract;
4. an Insolvency Event occurring in respect of the Supplier or any Guarantor required under the Award Form;
5. a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;
6. the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;
7. the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;
8. the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or
9. a need by the Buyer to take action to discharge a statutory duty;
 |
| **"Step-Out Plan"** | means the Supplier’s plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under the Contract following the completion of the Step-In Process; |
| **"Storage Media"** | the part of any device that is capable of storing and retrieving data;  |
| **"Sub-Contract"** | any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:1. provides the Deliverables (or any part of them);
2. provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or
3. 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 Supplier related to the Contract; |
| **“Subsidiary Undertaking”** | has the meaning set out in section 1162 of the Companies Act 2006; |
| **"Supplier"** | the person, firm or company identified in the Award Form; |
| **"Supplier Assets"** | all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets; |
| **"Supplier Authorised Representative"** | the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;  |
| **"Supplier Equipment"** | the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract; |
| **"Supplier Existing IPR"** | any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise) |
| **"Supplier Existing IPR Licence"** | means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Para 1.3 of Schedule 36. |
| **“Supplier Group”** | means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings; |
| **"Supplier Non-Performance"** | where the Supplier has failed to:1. Achieve a Milestone by its Milestone Date;
2. provide the Goods and/or Services in accordance with the Service Levels ; and/or
3. comply with an obligation under the Contract;
 |
| **"Supplier Profit"** | in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period; |
| **"Supplier Profit Margin"** | in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage; |
| **"Supplier Staff"** | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier’s obligations under the Contract; |
| **"Supplier's Confidential Information"** | 1. any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;
2. any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier’s attention or into the Supplier’s possession in connection with the Contract;

Information derived from any of (a) and (b) above; |
| **"Supplier's Contract Manager"** | the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment; |
| **"Supply Chain Information Report Template"** | the document at Annex 1 of Schedule 18 (Supply Chain Visibility); |
| **"Supporting Documentation"** | sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable; |
| **"Tender Response"** | the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender); |
| **"Termination Assistance"** | the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice; |
| **"Termination Assistance Notice"** | has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management); |
| **"Termination Notice"** | a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;  |
| **"Test Issue"** | any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract; |
| **"Test Plan"** | a plan:1. for the Testing of the Deliverables; and
2. setting out other agreed criteria related to the achievement of Milestones;
 |
| **"Tests and Testing"** | any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and "**Tested**" shall be construed accordingly; |
| **"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; |
| **"Third Party IPR Licence”** | means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36 |
| **"Transparency Information"** | the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for – 1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and
2. Commercially Sensitive Information;
 |
| **"Transparency Reports"** | the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports); |
| **"UK 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 (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 |
| **"Variation"** | means a variation to the Contract; |
| **"Variation Form"** | the form set out in Schedule 21 (Variation Form); |
| **"Variation Procedure"** | the procedure set out in Clause 28 (Changing the contract); |
| **"VAT"** | value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **"VCSE"** | a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; |
| **"Verification Period"** | has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges); |
| **"Work Day"** | 7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; |
| **"Work Hours"** | the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks; |
| **"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-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and  |
| **"Working Day"** | any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.  |

**Schedule 6 (Transparency Reports)**

***[Buyer Guidance: If Schedule 34 (Northern Ireland Law) is used then this Schedule 6 should not be used]***

1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.

1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.

1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.

1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

**Annex A: List of Transparency Reports**

|  |  |  |  |
| --- | --- | --- | --- |
| **Title**  | **Content**  | **Format**  | **Frequency**  |
| [Performance] | [ ] | [ ] | [ ] |
| [Charges] | [ ] | [ ] | [ ] |
| [Key Subcontractors] | [ ] | [ ] | [ ] |
| [Technical] | [ ] | [ ] | [ ] |
| [Performance management] | [ ] | [ ] | [ ] |

**Schedule 20 (Processing Data)**

**1. Status of the Controller**

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

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

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

1.1.3 “Joint Controller” with the other Party;

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

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

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

* 1. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
	2. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

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

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

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

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

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

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

2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

1. nature of the data to be protected;
2. harm that might result from a Personal Data Breach;
3. state of technological development; and
4. cost of implementing any measures;

2.4.3 ensure that:

* 1. the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (Processing Personal Data));
	2. it uses all reasonable endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor’s duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);

(ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and

* 1. have undergone adequate training in the use, care, protection and handling of Personal Data;

2.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

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

b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the **“IDTA”),** or International Data Transfer Agreement Addendum to the European Commission’s SCCs (the **“Addendum”),** as published by the Information Commissioner’s Office from time to time, as well as any additional measures determined by the Controller;

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

d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

2.4.5 where the Personal Data is subject to EU GDPR, not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

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

b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission’s decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;

* 1. the Data Subject has enforceable rights and effective legal remedies.
	2. the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
	3. the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

2.4.6 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:

2.5.1 receives a Data Subject Access Request (or purported Data Subject

 Access Request);

2.5.2 receives a request to rectify, block or erase any Personal Data;

2.5.3 receives any other request, complaint or communication relating to

 either Party's obligations under the Data Protection Legislation;

2.5.4 receives any communication from the Information Commissioner or a

 other regulatory authority in connection with Personal Data Processed

 under the Contract;

2.5.5 receives a request from any third Party for disclosure of Personal Data

 where compliance with such request is required or purported to be

 required by Law; or

2.5.6 becomes aware of a Personal Data Breach.

2.6 The Processor’s obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.

2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:

2.7.1 the Controller with full details and copies of the complaint, communication or request;

2.7.2 such assistance as is reasonably requested by the Controller to enable it to

 comply with a Data Subject Access Request within the relevant timescales

 set out in the Data Protection Legislation;

2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a

 Data Subject;

2.7.4 assistance as requested by the Controller following any Personal Data

 Breach; and/or

2.7.5 assistance as requested by the Controller with respect to any request from

 the Information Commissioner’s Office or any other regulatory authority, or

 any consultation by the Controller with the Information Commissioner's

 Office or any other regulatory authority.

2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

2.8.1 the Controller determines that the Processing is not occasional;

2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

2.11 Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:

2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;

2.11.2 obtain the written consent of the Controller;

2.11.3 enter into a written agreement with the Subprocessor which give effect

 to the terms set out in this Schedule 20 such that they apply to the

 Subprocessor; and

2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.

2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.

2.13 The Buyer may, at any time on not less than 30 Working Days’ notice, revise this Schedule 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

2.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Buyer may on not less than 30 Working Days’ notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

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

3.1 In the event that the Parties are Joint Controllers in respect of Personal Data

 under the Contract, the Parties shall implement Paragraphs that are necessary to

 comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this

 Schedule 20 (Processing Data).

**Independent Controllers of Personal Data**

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

3.3 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

3.4 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 3.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

3.5 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.

3.6 The Parties shall only provide Personal Data to each other:

3.6.1 to the extent necessary to perform their respective obligations under the

 Contract;

3.6.2 in compliance with the Data Protection Legislation (including by ensuring

 all required data privacy information has been given to affected Data

 Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and

3.6.3 where it has recorded it in Annex 1 (Processing Personal Data).

3.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

3.8 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

3.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract **(“Request Recipient”):**

3.9.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

3.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:

a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and

b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

3.10 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:

3.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;

3.10.2 implement any measures necessary to restore the security of any compromised Personal Data;

3.10.3 work with the other Party to make any required notifications to the Information Commissioner’s Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

3.10.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

3.11 Personal Data provided by one Party to the other Party may be used exclusively

 to exercise rights and obligations under the Contract as specified in Annex 1

 (Processing Personal Data).

3.12 Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the Contract which is specified in Annex 1 (Processing Personal Data).

3.13 Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 3.2 to 3.12 of this Schedule 20.

**Annex 1 - Processing Personal Data**

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.

1.1 The contact details of the Buyer’s Data Protection Officer are: **[Insert** Contact details]

1.2 The contact details of the Supplier’s Data Protection Officer are: **[Insert** Contact details]

1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.

1.4 Any such further instructions shall be incorporated into this Annex.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of Controller for each Category of Personal Data | **The Buyer is Controller and the Supplier is Processor**The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:* ***[Insert the scope of Personal Data which the purposes and means of the Processing by the Supplier is determined by the Buyer]***

**The Supplier is Controller and the Buyer is Processor**The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with Paragraph2 of the following Personal Data:* ***[Insert the scope of Personal Data which the purposes and means of the Processing by the Buyer is determined by the Supplier]***

**The Parties are Joint Controllers**The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:* ***[Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]***

**The Parties are Independent Controllers of Personal Data**The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:* *Business contact details of Supplier Personnel for which the Supplier is the Controller,*
* *Business contact details of any* *directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer’s duties under the Contract) for which the Buyer is the Controller,*
* ***[Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Buyer cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Buyer]***

***[Guidance where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]***  |
| Duration of the Processing | ***[INSERT*** *Clearly set out the duration of the Processing including dates]* |
| Nature and purposes of the Processing | ***[INSERT*** *Please be as specific as possible, but make sure that you cover all intended purposes.* *The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.**The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | ***[INSERT*** *Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | ***[INSERT*** *Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particularwebsite etc]* |
| Plan for return and destruction of the data once the Processing is completeUNLESS requirement under law to preserve that type of data | ***[INSERT*** *Describe how long the data will be retained for, how it be returned or destroyed]* |
| Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract | [**Clearly** identify each location] |
| Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach | [**Please** be as specific as possible] |

**Annex 2 - Joint Controller Agreement**

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

* 1. With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraph 2 of this Schedule 20 (Where one Party is Controller and the other Party is Processor) and Paragraphs 3.2 -3.12 of this Schedule 20 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
	2. The Parties agree that the [Supplier/Buyer]:

1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using all reasonable endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;

1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

1.2.3 is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;

1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and

1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier’s/Buyer’s] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

* 1. Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

**2. Undertakings of both Parties**

* 1. The Supplier and the Buyer each undertake that they shall:

2.1.1 report to the other Party every [x] months on:

a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;

d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs ‎2.1.1(a) to ‎(e);

2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs ‎2.1.1(c) to ‎(e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;

2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;

2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;

2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

2.1.7 use all reasonable endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

a) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information

b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;

c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;

2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:

a) nature of the data to be protected;

b) harm that might result from a Personal Data Breach;

c) state of technological development; and

d) cost of implementing any measures;

2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and

2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach;

2.1.11 where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

a) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or

b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement (the “IDTA”), or International Data Transfer Agreement Addendum to the European Commission’s SCCs (the “Addendum”), as published by the Information Commissioner’s Office from time to time, as well as any additional measures;

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

d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and

e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

2.1.12 where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:

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

b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission’s decision 2021/914/EU as well as any additional measures;

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

d) the transferring Party complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and

e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

* 1. Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

**3. Data Protection Breach**

3.1 Without prejudice to Paragraph ‎3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Buyer and its advisors with:

3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

3.1.2 all reasonable assistance, including:

a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

b) co-operation with the other Party including using such reasonable endeavours as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or

d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph ‎3.2.

3.2 Each Party shall use all reasonable endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

3.2.1 the nature of the Personal Data Breach;

3.2.2 the nature of Personal Data affected;

3.2.3 the categories and number of Data Subjects concerned;

3.2.4 the name and contact details of the Supplier’s Data Protection Officer or other relevant contact from whom more information may be obtained;

3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and

3.2.6 describe the likely consequences of the Personal Data Breach.

**4. Audit**

4.1 The Supplier shall permit:

4.1.1 the Buyer, or a third-party auditor acting under the Buyer’s direction, to conduct, at the Buyer’s cost, data privacy and security audits, assessments and inspections concerning the Supplier’s data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or

4.1.2 the Buyer, or a third-party auditor acting under the Buyer’s direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

**5. Impact Assessments**

The Parties shall:

5.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and

5.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

**6. ICO Guidance**

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

**7. Liabilities for Data Protection Breach**

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

7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach (**"Financial Penalties**") then the following shall occur:

7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier’s sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (Resolving disputes).

7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“Court”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “Claim Losses”):

7.3.1 if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;

7.3.2 if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and

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

7.4 Nothing in either Paragraph‎7.2 or Paragraph‎7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

**8. Termination**

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

**9. Sub-Processing**

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

9.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

9.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

**10. Data Retention**

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

**Schedule 2 (Specification)**

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

Our social value priorities

***[Guidance: Your specification must secure real social, environmental and economic benefits as set out in*** [***PPN 06/20 – Taking account of social value in the award of central government contracts***](https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts)***. To do this you and your stakeholders (including suppliers) need to be clear what the social value priorities are. How your priorities are delivered will be included in Schedule 4 (Tender) and will form part of the Contract.***

***This specification must elaborate on these as appropriate.***

***Refer to PPN 06/20 and your own policies and practices to understand how to include social value in your specifications. Target levels and performance reporting requirements will either be in Schedule 10 (Service Levels) or Schedule 26 (Sustainability) (in the event that Schedule 10 is not used).]***

These are our priorities in this procurement:

1. [**Add** social value priority 1]
2. [**Add** social value priority 2]
3. [**Add** social value priority 3]

[**Insert** the Specification]

**Schedule 3 (Charges)**

**1. How Charges are calculated**

1.1 The Charges:

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

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

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

**3. The pricing mechanisms**

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

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

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

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

4.1.2 costs incurred prior to the commencement of the Contract.

**5. When you will be reimbursed for travel and subsistence**

5.1 Expenses shall only be recoverable where:

5.1.1 the Time and Materials pricing mechanism is used; and

5.1.2 the Award Form states that recovery is permitted; and

5.1.3 they are Reimbursable Expenses and are supported by Supporting Documentation.

5.2 The Buyers expense policy is as set out below:

|  |  |
| --- | --- |
| **Expenses** | **Reimbursement** |
| Rail travel  | Standard class |
| Mileage | £0.45 per mile for the first 10,000 miles in a financial year£0.25 per mile for any mileage in excess of 10,000 miles in a financial year |
| Overnight hotel accommodation | Up to £85 per night outside LondonUp to £130 per night in London |
| Subsistence | Up to a maximum of £21 for a 24-hour period |

**Annex 1: Rates and Prices**

**Schedule 5 (Commercially Sensitive Information)**

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

* 1. In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
	2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).

Without prejudice to the Buyer's obligation to disclose Information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| **No.** | **Date** | **Item(s)** | **Duration of Confidentiality** |
| --- | --- | --- | --- |
|  | [insert date] | [insert details] | [insert duration] |

**Schedule 13 (Contract Management)**

1. Definitions

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

|  |  |
| --- | --- |
| **"Operational Board"** | the board established in accordance with Paragraph 4.1 of this Schedule; |
| **"Project Manager"** | the manager appointed in accordance with Paragraph 2.1 of this Schedule; |

1. Project Management
	1. The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
	2. The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
	3. Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.
2. Role of the Supplier Project Manager
	1. The Supplier Project Manager shall be:
		1. the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
		2. able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
		3. able to cancel any delegation and recommence the position himself; and
		4. replaced only after the Buyer has received notification of the proposed change.
	2. The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
	3. Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.
3. Role of The Operational Board
	1. The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
	2. The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex A to the Schedule.
	3. In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
	4. Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member’s attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
	5. The purpose of the Operational Board meetings will be to review the Supplier’s performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.
4. Contract Risk Management
	1. Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
	2. The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
		1. the identification and management of risks;
		2. the identification and management of issues; and
		3. monitoring and controlling project plans.
	3. The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
	4. The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

**Annex: Operational Boards**

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

***[Guidance note: Details of additional boards to be inserted.]***

**Schedule 16 (Security)**

**Part A: Short Form Security Requirements**

**1.** **Definitions**

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

**"Breach of Security"**  the occurrence of:

a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or

b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,

in either case as more particularly set out in the Security Policy where the Buyer has required compliance there with in accordance with Paragraph 2.1;

**"Security Management Plan"**  the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.

**2. Complying with security requirements and updates to them**

2.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

2.2 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.

2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.

2.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

**3. Security Standards**

3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

3.2.1 is in accordance with the Law and this Contract;

3.2.2 as a minimum demonstrates Good Industry Practice;

3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and

3.2.4 where specified by the Buyer in accordance with Paragraph 2.1 complies with the Security Policy and the ICT Policy.

3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

**4. Security Management Plan**

**4.1 Introduction**

4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

**4.2 Content of the Security Management Plan**

4.2.1 The Security Management Plan shall:

a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;

b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;

c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer’s Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;

d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer’s Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;

e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;

f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with the Security Policy as set out in Paragraph 2.1 ; and

g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

**4.3 Development of the Security Management Plan**

4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

**4.4 Amendment of the Security Management Plan**

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

a) emerging changes in Good Industry Practice;

b) any change or proposed change to the Deliverables and/or associated processes;

c) where necessary in accordance with Paragraph 2.2, any change to the Security Policy;

d) any new perceived or changed security threats; and

e) any reasonable change in requirements requested by the Buyer.

4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include:

a) suggested improvements to the effectiveness of the Security Management Plan;

b) updates to the risk assessments; and

c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.

4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

**5.** **Security breach**

5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:

5.2.1 immediately use all reasonable endeavours (which shall include any action or changes reasonably required by the Buyer) necessary to:

a) minimise the extent of actual or potential harm caused by any Breach of Security;

b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;

c) prevent an equivalent breach in the future exploiting the same cause failure; and

d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with Paragraph 2.1 ) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

**Schedule 21 (Variation Form)**

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

|  |
| --- |
| **Contract Details**  |
| This variation is between: | **[**Buyer**]** (**“the Buyer"**)And **[insert** name of Supplier**]** (**"the Supplier"**) |
| Contract name: | **[insert** name of contract to be changed] **(“the Contract”)** |
| Contract reference number: | **[insert** contract reference number] |
| **Details of Proposed Variation** |
| Variation initiated by: | **[delete** as applicable: Buyer/Supplier] |
| Variation number: | **[insert** variation number] |
| Date variation is raised: | **[insert** date] |
| Proposed variation |  |
| Reason for the variation: | **[insert** reason] |
| An Impact Assessment shall be provided within: | **[insert** number] days |
| **Impact of Variation** |
| Likely impact of the proposed variation: | **[Supplier to insert** assessment of impact]  |
| **Outcome of Variation** |
| Contract variation: | This Contract detailed above is varied as follows:* **[Buyer to insert** original Clauses or Paragraphs to be varied and the changed clause]
 |
| Financial variation: | Original Contract Value: | £ **[insert** amount] |
| Additional cost due to variation: | £ **[insert** amount] |
| New Contract value: | £ **[insert** amount] |

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |
|  |  |

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

|  |  |
| --- | --- |
| Signature |  |
| Date |  |
| Name (in Capitals) |  |
| Address |  |

**Schedule 22 (Insurance Requirements)**

***[Guidance: For guidance on risk, liability and insurance generally, see paragraph 1.5 and Annex 1 of the*** [***Model Services Contract Guidance on Gov.uk***](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1067778/MSC-Guidance-v2.0.pdf)***]***

1. **The insurance you need to have**
	1. The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
	2. The Insurances shall be:
		1. maintained in accordance with Good Industry Practice;
		2. (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
		3. taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
		4. maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
	3. The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.
2. **How to manage the insurance**
	1. Without limiting the other provisions of this Contract, the Supplier shall:
		1. take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
		2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
		3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
3. **What happens if you aren’t insured**
	1. The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
	2. Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.
4. **Evidence of insurance you must provide**
	1. The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.
5. **Making sure you are insured to the required amount**
	1. The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.
6. **Cancelled Insurance**
	1. The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination, or non-renewal of any of the Insurances.
	2. The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
7. **Insurance claims**
	1. The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
	2. Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of **[£to be determined by the Buyer]** relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.

***[Guidance: The insurance claims notification threshold should normally represent a significant or material value claim in connection with the requirement or represent an amount that would provide comfort to the Buyer that it has knowledge of claims that might impact on the Buyer.]***

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

**ANNEX: REQUIRED INSURANCES**

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

**1 Insured**

* 1. The Supplier
1. **Interest**
	1. To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:
		* 1. death or bodily injury to or sickness, illness or disease contracted by any person; and
			2. loss of or damage to physical property;

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

1. **Limit of indemnity**
	1. Not less than **£[to be determined by the Buyer]** in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but **£[to be determined by the Buyer]** in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

***[Guidance: The Buyer should set the Limit of Indemnity by way of an insurable risk review (supported by the Buyers professional insurance adviser). The level specified in the limit of indemnity above should be predicated upon:***

* ***The risk profile represented by the Buyer requirement in question***
* ***Potential frequency and severity of claims and losses (not the value of the contract) relative to the risk exposure***
* ***Insurance market availability in prevailing insurance market conditions.***
	1. ***The wording on the limit of indemnity for third party public and products liability reflects what is available in UK insurance market conditions for this type of insurance only. While insurance is available in the UK on this basis, it may not be available in other parts of the world, in which case Suppliers may need to seek an alternative UK insurance policy on this basis.]***
1. **Territorial limits**

**[United** **Kingdom]**

***[Guidance: The Buyer should populate any additional territories relative to the service delivery. The Annex drafting reflects United Kingdom insurance market conditions and availability only. Where there is an overseas requirement consider obtaining professional insurance advice to set the appropriate requirement in the Annex]***

1. **Period of insurance**
	1. From the date of this Contract for the period of the Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

***[Guidance: The Buyer should populate the period of insurance relative to the requirement in question. The period of insurance should reflect the period that the relevant insurable risk can materialise and take into account any contract specific issues such as phasing.]***

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

***[Guidance: As part of the insurance review the Buyer should consider what additional cover features and extensions may be required to protect its interests (e.g. contractual liability extension and legal defence costs in addition to the limit of indemnity). The Buyer may need to seek professional subject matter insurance advice in this regard.]***

1. **Principal exclusions**
	1. War and related perils.
	2. Nuclear and radioactive risks.
	3. Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
	4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
	5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
	6. Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
	7. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
	8. Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

[***Guidance: This list of exclusions represents insurance market wide exclusions for the third party public and products liability insurance. If something listed here is excluded and you wish it can be covered by an alternative insurance and include in PART C]***

1. **Maximum deductible threshold**
	1. Not to exceed **£ [Insert:** figure on contract award based on the Supplier’s acceptable response to the Invitation To Tender] for each and every third party property damage claim (personal injury claims to be paid in full).

**PART B: UNITED KINGDOM COMPULSORY INSURANCES**

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

**pART C: ADDITIONAL INSURANCES**

***[Guidance: You may wish to consider including the following additional required insurances. The Buyer may need to seek professional subject matter insurance advice in this regard. Examples of additional insurance are:***

|  |  |
| --- | --- |
| Professional Indemnity Insurance | Where the Buyer requirement includes a potential breach of professional duty by the Supplier in connection with professional advice and /or professional services to be maintained for 6 years after the End Date |
| Property Damage Insurance / Goods in Transit Insurance | Where the Buyer requirement necessitates primary perils insurance for relevant physical property (e.g. Buyer physical property in the care, custody and control of the Supplier in delivering the Contract). |
| Cyber Liability Insurance | Where the Buyer requirement includes specific cyber risk exposures. |
| Environmental Liability Insurance or Contractors Pollution Liability Insurance | Where the Buyer requirement includes exposure to significant pollution / contamination risks. |

 **Schedule 26 (Sustainability)**

Definitions

|  |  |
| --- | --- |
| [“Modern Slavery Assessment Tool” | means the modern slavery risk identification and management tool which can be found online at: <https://supplierregistration.cabinetoffice.gov.uk/msat>]  |
| [“Supply Chain Map” | means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:1. the name, registered office and company registration number of each entity in the supply chain;
2. the function of each entity in the supply chain; and
3. the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]
 |
| “Waste Hierarchy” | means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:1. Prevention;
2. Preparing for re-use;
3. Recycling;
4. Other Recovery; and
5. Disposal.
 |

**Part A**

1. Public Sector Equality Duty
	1. In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:
		1. eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
		2. advance:
			1. equality of opportunity; and
			2. good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

1. Employment Law
	1. The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

1. Modern Slavery
	1. The Supplier:
		1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
		2. shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
		3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
		4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
		5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
		6. shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
		7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
		8. shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
		9. shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
		10. shall not use or allow child or slave labour to be used by its Subcontractors; and
		11. shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.
2. Environmental Requirements
	1. The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
	2. In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:
		1. prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
		2. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
		3. ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
	3. In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
	4. In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
	5. The Supplier shall 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*](https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs)*.*

1. Supplier Code of Conduct
	1. In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

[*https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/779660/20190220-Supplier\_Code\_of\_Conduct.pdf*](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

1. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request, [provided that such requests are limited to [two] per requirement per Contract Year].

Part B

Not used

**Part C**

1. **Social Value**
	1. The Supplier shall provide a Social Value Report to the Buyer as outlined in Table A.

**Table A: Social Value Report**

|  |  |
| --- | --- |
| **Required Detail** | **Frequency** |
| A high-level summary of the Supplier’s performance against the Social Value priorities over the relevant period | [Quarterly] |
|  Performance by the Supplier against each of the Social Value KPIs set out at Table B over the relevant period | [Quarterly] |
| [Insert any other requirements] |  |

**Table B: Social Value KPIs**

***[Guidance – use the Model Award Criteria and Reporting Metrics set out in the procurement documentation and in the tenderer’s proposals to establish Social Value KPIs in line with PPN 06/20, and include these below. Where the successful bidder proposes specific commitments in its tender proposal which are in addition to the above, then such commitments will also be used to establish Social Value KPIs.***

***The Buyer should discuss Social Value with participants during pre-market engagement to inform the selection of relevant, proportionate and non-discriminatory questions and criteria from the Social Value Model, and to consider whether the market in question has a mature Social Value offering. Such Social Value KPIs will always comprise a combination of a deliverable and a numeric element, being specific, measurable and time-bound commitments, by which performance of that deliverable is to be measured.***

***The Buyer should ensure that the social value priorities to be delivered and how the Supplier will deliver these priorities are included in the Contract (for example in Schedule 2 (Specification) and Schedule 8 (Implementation Plan)]***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No.** | **Social Value Title** | **Description of Deliverable** | **Target** | **Frequency of Measurement** | **Publishable Performance Information*****[Guidance: It is HMG’s intention to publish the top Social Value KPI for the Government’s most important contracts. Where this publication requirement applies to this Contract, the Authority may use the below to select the single most important Social Value KPI, which may be publishable]*** |
| Social Value KPI1 | [e.g. Reducing the disability employment gap] | [e.g. Number of disabled people in the contract workforce] | [e.g. 2%] | [Quarterly] | [YES/NO] |
| Social Value KPI2 |  |  |  |  | [YES/NO] |
| Social Value KPI3 |  |  |  |  | [YES/NO] |

**Schedule 27 (Key Subcontractors)**

1. **Restrictions on certain subcontractors**
	1. The Supplier is entitled to sub-contract its obligations under the Contract to the Key Subcontractors set out in the Award Form.
	2. Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
		1. the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
		2. the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
		3. the proposed Key Subcontractor employs unfit persons.
	3. The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
		1. the proposed Key Subcontractor’s name, registered office and company registration number;
		2. the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
		3. where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm’s-length" terms;
		4. the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
		5. (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
	4. If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
		1. a copy of the proposed Key Sub-Contract; and
		2. any further information reasonably requested by the Buyer.
	5. The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
		1. provisions which will enable the Supplier to discharge its obligations under the Contract;
		2. a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
		3. a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
		4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
		5. obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Contract in respect of:
			1. the data protection requirements set out in Clause 18 (Data protection);
			2. the FOIA and other access request requirements set out in Clause 20 (When you can share information);
			3. the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
			4. the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
			5. the conduct of audits set out in Clause 6 (Record keeping and reporting);
		6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 (When the Buyer can end this contract) and 14.5 (What happens if the contract ends) of this Contract;
		7. a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
		8. a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step‑in on substantially the same terms as are set out in Clause 13 (Step-in rights).
	6. The Supplier shall not terminate or materially amend the terms of any Key Sub‑Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

**Schedule 29 (Key Supplier Staff)**

* 1. The Annex 1 to this Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date (“**Key Staff**”).
	2. The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
	3. The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
	4. The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
		1. requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
		2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
		3. the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
	5. The Supplier shall:
		1. notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
		2. ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
		3. give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice;
		4. ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
		5. ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
	6. The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

**Schedule 30 (Exit Management)**

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

|  |  |
| --- | --- |
| **"Exclusive Assets"** | Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables; |
| **"Exit Information"** | has the meaning given to it in Paragraph 3.1 of this Schedule; |
| **"Exit Manager"** | the person appointed by each Party to manage their respective obligations under this Schedule; |
| **"Net Book Value"** | the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice); |
| **"Non-Exclusive Assets"** | those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes; |
| **"Replacement Goods"** | any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party; |
| **"Replacement Services"** | any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party; |
| **"Termination Assistance Period"** | the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule; |
| **"Transferable Assets"** | Exclusive Assets which are capable of legal transfer to the Buyer; |
| **"Transferable Contracts"** | Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation; |
| **"Transferring Assets"** | has the meaning given to it in Paragraph 8.2.1 of this Schedule; |
| **"Transferring Contracts"** | has the meaning given to it in Paragraph 8.2.3 of this Schedule; |
| **“Virtual Library”** | the data repository hosted by the Supplier containing the accurate information about the Contract and the Deliverables in accordance with Paragraph 2.2of this Schedule. |

1. **Supplier must always be prepared for contract exit**
	1. The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
	2. During the Contract Period, the Supplier shall within 30 days from the Start Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:
		1. a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
		2. a configuration database detailing the technical infrastructure, a schedule of the IPRs which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables,

and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.

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* 1. Where Schedule 7 (Staff Transfer) applies to this Contract, the Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).
	2. The Supplier shall:
		1. ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and
		2. procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
	3. Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.
1. **Assisting re-competition for Deliverables**
	1. The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
	2. The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier’s or its Subcontractors’ prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
	3. The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
	4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.
2. **Exit Plan**
	1. The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").
	2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
	3. The Exit Plan shall set out, as a minimum:
		1. how the Exit Information is obtained;
		2. a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
		3. the management structure to be employed during the Termination Assistance Period;
		4. a detailed description of both the transfer and cessation processes, including a timetable;
		5. how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
		6. details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
		7. the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
		8. how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
		9. any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges;
		10. proposals for the training of key members of the Replacement Supplier’s staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
		11. proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
		12. proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
		13. proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
		14. proposals for the disposal of any redundant Deliverables and materials;

* + 1. how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
		2. any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
	1. Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (*Charges).* The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.
	2. The Supplier shall:
		1. maintain and update the Exit Plan (and risk management plan) no less frequently than:
			1. every [six (6) months] throughout the Contract Period;
			2. no later than [twenty (20) Working Days] after a request from the Buyer for an up-to-date copy of the Exit Plan;
			3. as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [ten (10) Working Days] after the date of the Termination Assistance Notice;
			4. as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and
		2. jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
	3. Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
	4. A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.
1. **Termination Assistance**
	1. The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
		1. the nature of the Termination Assistance required; and
		2. the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
	2. The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
		1. no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
		2. the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days’ written notice upon the Supplier.
	3. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
	4. In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).
2. **Termination Assistance Period**
	1. Throughout the Termination Assistance Period the Supplier shall:
		1. continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
		2. provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
		3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
		4. subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
		5. at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
		6. seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
	2. If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
	3. If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.
3. **Obligations when the contract is terminated**
	1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
	2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
		1. cease to use the Government Data;
		2. vacate any Buyer Premises;
		3. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
		4. provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
			1. such information relating to the Deliverables as remains in the possession or control of the Supplier; and
			2. such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
	3. Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.
	4. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.
4. **Assets, Sub-contracts and Software**
	1. Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
		1. terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
		2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
	2. Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:
		1. which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
		2. which, if any, of:
			1. the Exclusive Assets that are not Transferable Assets; and
			2. the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

* + 1. which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
	1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
	2. Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
	3. Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
		1. procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
		2. procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
	4. The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
	5. The Buyer shall:
		1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
		2. once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
	6. The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
	7. The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.
1. **No charges**
	1. Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.
2. **Dividing the bills**
	1. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:
		1. the amounts shall be annualised and divided by 365 to reach a daily rate;
		2. the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
		3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

**ANNEX 1: SCOPE OF TERMINATION ASSISTANCE**

***[Guidance: Please see paragraph 7.7 of the*** [***Model Services Contract Guidance published on Gov.uk***](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1067778/MSC-Guidance-v2.0.pdf) ***for further detail on choosing Termination Assistance Services]***

* 1. The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:
		1. notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
		2. providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
		3. providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;
		4. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re‑writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;
		5. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
		6. agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
		7. agreeing with the Buyer a handover plan for all of the Supplier’s responsibilities as set out in the Security Management Plan;
		8. providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;
		9. answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
		10. agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;
		11. providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:
			1. to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
			2. following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;
		12. knowledge transfer services, including:
			1. making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
			2. transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
			3. providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
			4. providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
			5. allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,
			6. and any such person who is provided with knowledge transfer services will signa confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).
	2. The Supplier will:
		1. provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and
		2. co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.
	3. To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.
	4. The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:
		1. copies of up-to-date procedures and operations manuals;
		2. product information;
		3. agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and
		4. key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

* 1. During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
		1. any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:
			1. sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
			2. during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and
		2. the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**Schedule 32 (Background Checks)**

* 1. **When you should use this Schedule**

This Schedule should be used where Supplier Staff must be vetted before working on Contract.

* 1. **Definitions**

**“Relevant Conviction”** means any conviction listed in Annex 1 to this Schedule.

* 1. **Relevant Convictions**
	2. The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.
	3. Notwithstanding Paragraph 3.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):
		1. carry out a check with the records held by the Department for Education (DfE);
		2. conduct thorough questioning regarding any Relevant Convictions; and
		3. ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.

**Annex 1 – Relevant Convictions**

***[Insert Relevant Convictions here]***

**Schedule 4 (Tender)**

***[Insert Tender Here]***

**Call Off Order Process**