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The Short form Contract

**THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE ACTING AS PART OF  
THE CROWN THROUGH THE UK HEALTH SECURITY AGENCY**

**AND**

**WESSEX WATER LIMITED**

---

**CONTRACT**

**FOR**

**WATER SAMPLING SUPPORT SERVICES**

**R&S0022-01-09 / C152256**

# Order Form

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                          |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>1. Contract Reference</b> | R&S0022-01-09 / C152256                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                          |
| <b>2. Date</b>               | Please refer to the date of the final signature within the final table in this Order Form                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                          |
| <b>3. Buyer</b>              | Secretary of State for Health and Social Care acting as part of the Crown through the UK Health Security Agency<br><br>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                          |
| <b>4. Supplier</b>           | Wessex Water Limited<br>Address:<br>Company Number 02366633                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                          |
| <b>5. The Contract</b>       | <p>There is no minimum Test volume under this Contract, and the allocation of Test kit Samples is wholly at the discretion of the Supplier. The Parties agree that when a Buyer seeks Deliverables from the Supplier under the Contract, the Buyer and Supplier will agree and execute a Statement of Work (in the form of the template set out in Annex 4 to this Contract). The Supplier shall supply the Deliverables described in the Statement of Work on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any Annexes.</p> <p>Upon the execution of each Statement of Work it shall become incorporated into the Buyer's and Supplier's Contract.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions. In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p> |                                                                                                                          |
| <b>6. Deliverables</b>       | Goods                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | None                                                                                                                     |
|                              | Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | To be performed in accordance with Annex 2 – Specification hereto and as more fully described in each Statement of Work. |

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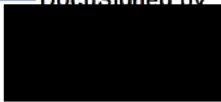
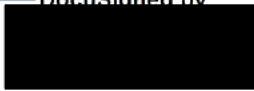
|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>7. Specification</b>                       | The specification of the Deliverables is as set out in Annex 2 – Specification and as more fully described in each Statement of Work.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>8. Term</b>                                | The Term shall commence Sept 2022 and the Expiry Date shall be Sept 2025 or when the maximum value of the contract is reached, whichever is sooner. Unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>9. Charges</b>                             | <p>Max contract value shall be £200,000 ex VAT</p> <p>The Charges for the Deliverables shall be as set out in Annex 4 – Statement of Work Template, as more fully described in each Statement of Work.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>10. Payment</b>                            | <p>All invoices must be sent, quoting a valid [REDACTED]</p> <p>Within twenty (20) Working Days of receipt of your countersigned copy of a Statement of Work, we will send you a unique Purchase Order Number. You must be in receipt of a valid Purchase Order Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid Purchase Order Number. Purchase Order 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.</p> <p>If you have a query regarding an outstanding payment, please contact our Accounts Payable section by email to [REDACTED]</p> |
| <b>11. Buyer Authorised Representative(s)</b> | <p>For general liaison your contact will continue to be:</p> <p>[REDACTED]</p> <p>[REDACTED]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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|                                    |                                                                                                                                                                               |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>12. Address for notices</b>     | <div>Buyer:<div><div></div><div></div></div></div> <div>Supplier:<div>Wessex Water Limited</div><div>Attention</div><div>Email:</div></div>                                   |
| <b>13. Key Personnel</b>           | <div>Buyer:<div><div></div><div></div></div></div> <div>Supplier:<div>Wessex Water Limited</div><div>Attention:</div><div>Email:<div><div></div><div></div></div></div></div> |
| <b>14. Procedures and Policies</b> | N/A                                                                                                                                                                           |

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| For and behalf of the Supplier:                                                                                                                                                                                                                                                                                                                                                                   | For and behalf of the Buyer:                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div>DocuSigned by:<br/><br/>5A6C3B9A7AA04BD...</div> <div>Full Name: </div> <div>Job Title/Role: </div> <div>Date Signed: 30th May 2023</div> | <div>DocuSigned by:<br/><br/>313AF9AB4173442...</div> <div>Full Name: </div> <div>Role: </div> <div>Date Signed: 31 May 2023</div> |

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## **Annex 1 – Authorised Processing Template**

Not applicable

## Annex 2 – Specification

### BACKGROUND

The Buyer requires the Supplier to provide wastewater sampling activities, within the region in which the Supplier operates, as and when required and as further described in each individual Statement of Work (SOW). The Parties will execute a SOW for each set of Buyer Deliverables required. Any ad-hoc Deliverables requirements are to be treated as individual requirements, and the Parties should execute a separate SOW in respect of each, or alternatively agree a Variation to an existing SOW.

There are two primary locations for wastewater sampling:

- 1.1. Manholes in urban or community-based locations; and
- 1.2. Treatment centres, typically at primary inlet points.

### 2. DETAILED SPECIFICATION

Unless expressly detailed to the contrary within any individual SOW the Supplier shall comply with the following Specification with respect to provision of samples.

#### 2.1 SAMPLING REQUIREMENTS

##### 2.1.1 Sampling Timing

- 2.1.1.1 Samples are to be collected at morning peak flow and Grab samples shall be taken during the hours of 0800hrs to 1200hrs on the agreed days.
- 2.1.1.2 In unforeseen and unagreed circumstances, if this is not possible, then the Buyer's Authorised Representative shall be informed, in writing, by 1700hrs on the Working Day upon which the delay occurred and subsequently reported formally as defined in section 3.0.
- 2.1.1.3 If used, Autosamplers need to be set to take a representative 24-hour flow capture. The composite sample should be of 24 equal samples collected over the designated 24-hour period and refrigerated during the sampling period. The 24-hour time period sampled each time by the composite sampler should remain consistent throughout the duration of service.
- 2.1.1.4 The Supplier shall arrange the resources and all sampling equipment, temperature-controlled cool box for wastewater sampling from their agreed sites as agreed between the Parties. The Supplier will also be responsible for the timely transportation of these samples to a pre-decided location to store for collection as outwith Supplier Scope in Clause 2.2 below to undertake the required activities.
- 2.1.1.5 Resources shall be provided in the required numbers to deliver the sampling services at the locations detailed in the SOW.

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## 2.1.2 Sampling Sites

Table of sampling Sites will be defined in each SOW.

Site assessment checklist to be a mandatory requirement to be completed by the Supplier for each site before sampling is undertaken. Preferably, sampling site visits will be arranged with and completed by an agreed representative of Buyer to ensure adhering to Sampling protocol with agreed checklist in place.

## 2.1.3 Sampling Frequency

Frequency of sample collection will be detailed within each SOW.

## 2.1.4 Sampling Method

With respect to urban or community-based sampling, the sampling method shall be agreed in writing between the Supplier and Buyer for all sampling points and methods prior to undertaking the activities detailed here and will be subject to section 3.0.

With respect to treatment centres, composite samples should be taken at the inlet of the wastewater treatment plant, after the screening and grit removal steps (if possible), at a point that is well-mixed.

In the event that composite sampling, the preferred method of sample collection at Treatment Centres, is interrupted or not possible (due to sampler malfunction, Urban Wastewater Sampling requirements, etc.) a grab sample will be provided instead (if morning peak flow has not been missed) and this change shall be recorded on the provided sampling form. If a composite sample is not possible and a grab sample is outside the timings defined in Clause 2.1.1 then a grab sample will be taken, and this change shall be recorded on the provided sampling form.

In the event that, for unforeseen and unagreed circumstances, this is not possible, then the Buyer's Authorised Representative shall be informed, in writing, by 1700hrs on the Working Day upon which the delay occurred and subsequently reported formally as defined in section 3.0.

## 2.1.5 Bottling, Labelling &amp; Storage

Bottles shall be provided by the Buyer in accordance with Clause 2.2.1 below.

Samples will need to be labelled and made ready for collection, as instructed in each SOW.

The Buyer will provide to the Supplier, as necessary or when requested, process documentation that must be adhered to for the preparation, identification, labelling, transport and storage of samples dependent upon whether these samples are going to UK Laboratories or being sent to Commercial Partner Laboratories.

The location to which samples are to be sent for analysis will be defined in each SOW.

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## 2.2 DELIVERABLES OUTWITH SUPPLIER SCOPE

### 2.2.1 Sourcing of Bottles or Labels

Bottles and Labels are, and will be, provided by the Buyer's delivery partner, the Environment Agency (EA), and are, and will be, sent to a location agreed between the Supplier and the Buyer from where the Supplier will distribute, as necessary, in support of their activities.

The Supplier will inform the Buyer of any issues, such as shortage, defects or other conditions that may affect the Suppliers ability to fulfil their obligations at the earliest opportunity of such conditions occurring.

These arrangements are the responsibility of the Buyers Authorised Representative and the Technical Services Team at the EA.

### 2.2.2 Transport of Samples to Laboratories

Samples will be transported to laboratories in the UK or the EU via 3rd party courier services and/or the EA with arrangements being the responsibility of the Buyer's Authorised Representative and the Technical Services Team at the EA and will be formally communicated to the Supplier as and when required.

The Supplier will ensure that all samples are correctly labelled, stored and ready for collection at a point agreed between the Supplier and Buyer and any change(s) to the collection requirements will be agreed between the Buyer and Supplier prior to any changes being made.

## 3. GOVERNANCE / WAYS OF WORKING

The Buyer will agree in writing with the Supplier the provision, via an agreed format that the Buyer will define in each SOW, of accurate progress reports which shall include as a minimum:

- highlights of significant accomplishments during the reporting period;
- summary information of work and progress achieved throughout the reporting period; and,
- details of any corrective actions taken / to be taken by the Supplier.
- Progress report shall be submitted on a weekly basis to the Buyers Authorised Representative by 1700hrs on a Monday to cover activities of the preceding reporting period.

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At the Buyer discretion, they shall arrange a monthly meeting with the Supplier to meet on a monthly basis to review the site sampling data from the past month and to review expected forecast for the next month and agree invoicing for the previous month.

## Annex 3 – Charges

### 1.0 GENERAL

- 1.1 For the satisfactory performance of the Services provided in accordance with the Contract, the Buyer shall reimburse the Supplier in accordance with the rates and prices fully detailed in each Statement of Work (template found in Annex 4).
- 1.2 The rates and prices specified in this Section shall be deemed as all-inclusive and to allow for all costs incurred by the Supplier in complying with the terms and conditions of the Contract, and shall represent the total remuneration due to the Supplier in full consideration of the satisfactory performance of the Services in accordance with the Contract.
- 1.3 In the event that additional personnel, equipment or Supplier supplied materials are requested by the Buyer, rates and prices for such Goods and/or Services shall be agreed in writing between the Buyer and the Supplier prior to the commencement of Services specified in each Statement of Work.
- 1.4 The Buyer shall not accept the Supplier's invoices for Services where rates and prices have not been agreed in writing between the parties either in Annex 3, the Statement of Works template (Annex 4) or via a subsequent amendment to the Contract prior to the commencement of Services.
- 1.5 Any lump sum rates and prices, unless specified to the contrary, shall include but not be limited to the following:
  - 1.5.1 The provision of all direct, indirect, productive and non-productive labour, supervision and management including all wages, salaries and associated payroll costs (including but not limited to overtime, National Health Insurance, private health plan, pensions, employers' liability or other insurance, sickness benefit, holidays, bonus and all costs of crew changeovers). This shall further include non-productive time such as meal / tea breaks and time required to travel to and from the worksite;
  - 1.5.2 Provision and maintenance of the Supplier's HSE and QA Systems;
  - 1.5.3 The Supplier shall not be entitled to remuneration in respect of personnel or equipment time incurred non-productively:
    - 1.5.3.1 Through shortages or delays in the supply by the Supplier of personnel, equipment, information, or materials, provided that the Buyer shall have given to the Supplier adequate notice of the need for such supply; and / or
    - 1.5.3.2 Due to a lack of planning of part of the Supplier.
- 1.6 No reimbursement will be made for Services which are not performed in accordance with the Contract;
- 1.7 The Buyer shall reimburse the Supplier in British Pounds Sterling (GBP);
- 1.8 The rates and prices are exclusive of any incidence for Value Added Tax ("VAT") applicable to the Goods and Services provided by the Supplier under the Contract. The amount of VAT chargeable thereon shall be paid to the Supplier by the Buyer in addition to any other payments becoming due under the Contract upon production of a valid tax invoice;

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1.9 The Contract Charges shall be calculated in accordance with this Annex 3 - Charges for each Statement of Work which shall include the following:

1.9.1 All lump sums, unit rates and prices whether conducted on milestone, reimbursable or cost-plus basis;

1.9.2 Any changes to the purchase order by virtue of any approved variations.

**2.0 NOT APPLICABLE**

**2.1 NOT APPLICABLE**

2.1.1 The Buyer shall be reimbursed at the actual costs incurred in the preceding month. The costs shall be calculated using the relevant sample cost detailed in Table 1. The Buyer may request a more detailed breakdown of costs to identify the costs of sampling a specific point, location or locations over a period and the Supplier should ensure they are able to supply such a level of detail if requested.

2.1.2 Where a sample collection is missed due to default by Supplier and/or its subcontractor, the Supplier shall not be reimbursed for that sample. However, where a sample cannot be collected due to factors outwith Supplier and/or its subcontractor's control, the Supplier shall be reimbursed in accordance with the Contract.

2.1.3 Each invoice submitted by Supplier shall include, but not be limited to:

2.1.3.1 A copy of the list of current sites and sampling collected during the period;

2.1.3.2 Where a sample has not been collected, the Supplier shall provide details of the reason for failure; and

2.1.3.3 Reference to the purchase order.

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| Line Item | Description         | Unit/Description | Rate/Cost |
|-----------|---------------------|------------------|-----------|
| 1         | Sampling Cost       | Cost per sample  |           |
| 2         | Additional Cost (1) | Description      |           |
| 3         | Additional Cost (2) | Description      |           |
| 4         | Additional Cost (n) | Description      |           |

Table 1: for Internal reference

## Pricing Notes:

Line Item 1 includes the cost of a suitably qualified and trained person, persons or team complete with transport as required, temperature controlled cool boxes and any necessary sampling equipment for the sampling of the required location(s)

## Annex 4 – Statement of Work Template

### 1. Statement of Works (SOW) Details

Upon execution, this SOW forms part of the Contract (reference below).

The Parties will execute a SOW for each set of Buyer Deliverables required. Any ad-hoc Deliverables requirements are to be treated as individual requirements in their own right and the Parties should execute a separate SOW in respect of each, or alternatively agree a Variation to an existing SOW.

All SOWs must fall within the Specification and provisions of the Contract.

The details set out within this SOW apply only in relation to the Deliverables detailed herein and will not apply to any other SOWs executed or to be executed under this Contract, unless otherwise agreed by the Parties in writing.

**1.1. Date of SOW:**

**1.2. SOW Title:**

**1.3. SOW Reference:**

**1.4. Contract Reference:**

**1.5. Buyer:**

**1.6. Supplier:**

**1.7. SOW Start Date:**

**1.8. SOW End Date:**

**1.9. Duration of SOW:**

**1.10.Key Personnel (Buyer):**

**1.11.Key Personnel (Supplier):**

**1.12.Subcontractors:**

## 2. Call-Off Contract Specification – Deliverables Context

### 2.1. Overview of Requirement: [TBC]

### 2.2. Buyer Requirements – SOW Deliverables

Outcome Description: [TBC]

### 2.3. Delivery Plan:

### 2.4. Dependencies:

### 2.5. Performance Management:

### 2.6. SOW Reporting Requirements:

## 3. Charges

### Call Off Contract Charges:

The applicable charging method(s) for this SOW is:

- [Capped Time and Materials]
- [Incremental Fixed Price]
- [Time and Materials]
- [Fixed Price]
- [2 or more of the above charging methods]

[Buyer to select as appropriate for this SOW]

The estimated maximum value of this SOW (irrespective of the selected charging method) is £ [Insert detail].

### Reimbursable Expenses:

[See Expenses Policy in Annex 1 to Call-Off Schedule 5 (Pricing Details and Expenses Policy)]

[Reimbursable Expenses are capped at £[Insert] [OR [Insert] percent ([X]%) of the Charges payable under this Statement of Work.]

[None]

[Buyer to delete as appropriate for this SOW]

## 4. Signatures and Approvals

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**Agreement of this SOW**

BY SIGNING this Statement of Work, the Parties agree that it shall be incorporated into the Order Form and incorporated into the Contract and be legally binding on the Parties:

| <b>For and on behalf of the Supplier:<br/>(Wessex Water)</b> | <b>For and on behalf of the Buyer:<br/>(UKHSA)</b> |
|--------------------------------------------------------------|----------------------------------------------------|
|                                                              |                                                    |

# Short form Terms

## 1 Definitions used in the Contract

- 1.1 In this Contract and all Statement of works executed between the parties, unless the context otherwise requires, the following words shall have the following meanings:

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Buyer"</b>                    | means the person identified in the letterhead of the Order Form;                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Buyer Cause"</b>              | means any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents, delivery partners, appointed third parties, in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;                                                                                                                                                 |
| <b>"Central Government Body"</b>  | means 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: <ul style="list-style-type: none"> <li>• Government Department.</li> <li>• Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>• Non-Ministerial Department; or</li> <li>• Executive Agency;</li> </ul> |
| <b>"Charges"</b>                  | means the charges for the Deliverables as specified in the Order Form;                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Compliance Officer"</b>       | means the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Confidential Information"</b> | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;                                                                                                                                                                  |
| <b>"Contract"</b>                 | means the contract between (a) the Buyer and (b) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form, an executed Statement of Works, the Conditions, the Annexes and the                                                                                                                                                                                                                                                                 |

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|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 | Appendices;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Controller"</b>             | has the meaning given to it in the GDPR;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>"Deliver"</b>                | means hand over the Deliverables to the Buyer's appointed third party and on the date specified in the Order Form or as may be agreed between the parties. Delivered and Delivery shall be construed accordingly;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>"Existing IPR"</b>           | means any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Expiry Date"</b>            | means the date for expiry of the Contract as set out in the Order Form;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"FOIA"</b>                   | means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>"Force Majeure Event"</b>    | means any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: (a) any industrial dispute relating to the Parties, the Staff of either Party (including any subsets of them) or any other failure in either Party's or their respective subcontractor's supply chain; (b) 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 (c) any failure of delay caused by a lack of funds; |
| <b>"GDPR"</b>                   | is the General Data Protection Regulation (Regulation (EU) 2016/679);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Good Industry Practice"</b> | means 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;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Government Data"</b>        | means: (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: (i) are supplied to the Supplier by or on behalf of the Buyer; or (ii) the Supplier is required to                                                                                                                                                                                                                                                                                                                                                                                                                                     |

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|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                                   | generate, process, store or transmit pursuant to the Contract; or (b) any Personal Data for which the Buyer is the data Controller;                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Information"</b>              | has the meaning given under section 84 of the FOIA;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Information Commissioner"</b> | means 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;                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Insolvency Event"</b>         | means in respect of a person: (a) if that person is insolvent; (b) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); (c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; (d) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction; |
| <b>"Key Personnel"</b>            | means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>"Law"</b>                      | means (a) any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, byelaw, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or (b) directives or requirements with which the Supplier is bound to comply;                                                                                                                                                                        |
| <b>"New IPR"</b>                  | means any and all intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>"Notifiable Default"</b>       | means a Level One Failure and/or a Level Two Failure (as the case may be);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Order Form"</b>               | means the letter from the Buyer to the Supplier printed above these terms and conditions;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Party"</b>                    | means the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"Personal Data"</b>            | has the meaning given to it in the GDPR;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>"Purchase Order Number"</b>    | means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;                                                                                                                                                                                                                                                                                                                                                                                                                       |

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|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>"Rectification Plan"</b>         | means the Supplier's plan (or revised plan) to rectify it's breach using the template in Appendix 1 which shall include:<br>(a) full details of the default that has occurred, including a root cause analysis;<br>(b) the actual or anticipated effect of the default; and<br>(c) the steps which the Supplier proposes to take to rectify the default (if applicable) and to prevent such default from recurring, including timescales for such steps and for the rectification of the default (where applicable); |
| <b>"Rectification Plan Process"</b> | means the process set out in Appendix 1;                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Regulations"</b>                | means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;                                                                                                                                                                                                                                                                                                                                                          |
| <b>"Request for Information"</b>    | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);                                                                                                                                                                                                                                                                                                                                                    |
| <b>"Services"</b>                   | means the services to be supplied by the Supplier to the Buyer under the Contract;                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Specification"</b>              | means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;                                                                                                                                                                                                                                                                                                                                         |
| <b>"Step In Rights"</b>             | means the rights set out in Appendix 2;                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>"Supplier Staff"</b>             | means 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 a Contract;                                                                                                                                                                                                                                                                                                                 |
| <b>"Supplier"</b>                   | means the person named as Supplier in the Order Form;                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"Term"</b>                       | means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with Clause 11.2 or terminated in accordance with the terms and conditions of the Contract;                                                                                                                                                                                                                                                                           |
| <b>"VAT"</b>                        | means value added tax in accordance with the provisions of the Value Added Tax Act 1994;                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>"Workers"</b>                    | 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)<br>( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in                                                                                    |

## The Short form Contract

|                      |                                                                                                           |
|----------------------|-----------------------------------------------------------------------------------------------------------|
|                      | respect of the Deliverables;                                                                              |
| <b>"Working Day"</b> | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

## 2 Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that Law; and
- 2.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

## 3 How the Contract works

- 3.1 Not used.
- 3.2 Not used.
- 3.3 The Supplier warrants and represents that its tender and all statements made, and documents submitted as part of the procurement of Deliverables are and remain true and accurate.
- 3.4 The Parties intend that this Contract will not oblige the Buyer to buy or the Supplier to supply Deliverables. The Parties agree that when a Buyer seeks Deliverables from the Supplier under the Contract, the Buyer and Supplier will agree and execute a Statement of Work. Upon the execution of each Statement of Work it shall become incorporated into the Buyer and Supplier's Contract.

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**4 What needs to be delivered****4.1 All Deliverables**

The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all Law.

**4.2 NOT REQUIRED****4.3 Services clauses**

(a) The Supplier shall report to the Buyer occasions of late and/or non-delivery of the Services in accordance with paragraph 4.1 of Annex 2 (Specification) and, without prejudice to its other rights, the Buyer shall not be obliged to pay for late and/or non-delivery of the Services.

(b) Where in any:

(i) rolling fourteen (14) day period the Supplier (otherwise than due to a Force Majeure Event or Buyer Cause) collects less than 90% of the samples required to be collected in accordance with the sampling methods and timescales set out in Annex 2 (Specification) ("**Level One Failure**") the Buyer shall be entitled within ten (10) Working Days of the Buyer being notified of the occurrence of a Level One Failure to require the Supplier to comply with the Rectification Plan Process; and/or

(ii) rolling forty-two (42) day period (otherwise than due to a Force Majeure Event or Buyer Cause) the Supplier collects less than 95% of the samples required to be collected in accordance with the sampling methods and timescales set out in Annex 2 (Specification) ("**Level Two Failure**") the Buyer shall be entitled within ten (10) Working Days of the Buyer being notified of the occurrence of a Level Two Failure to require the Supplier to comply with the Rectification Plan Process, and the Buyer shall be entitled to exercise its Step In Rights,

and the Supplier shall be obliged to notify the Buyer in writing within one (1) Working Day of the occurrence of a Level One Failure and/or a Level Two Failure (as appropriate).

If a Rectification Plan fails to remedy a Level One Failure by the end of the rectification period set out in the Rectification Plan and it continues or if a Level One Failure occurs within forty-two (42) days of a previous Level One Failure and the root cause of the subsequent Level One Failure is the same or substantially similar to the earlier Level One Failure, the Buyer shall be entitled to require the Supplier to comply with the Rectification Plan Process, however, if such Rectification Plan fails to remedy the failure or if within a further forty-two (42) days another Level One Failure occurs and the root cause is the same, the Buyer shall be entitled to exercise its Step In Rights and the Buyer shall, without prejudice to its other rights and remedies, be

## The Short form Contract

entitled to treat the Supplier as having committed an irremediable material breach of the Contract.

- (c) If a Rectification Plan fails to remedy a Level Two Failure by the end of the rectification period set out in the Rectification Plan, the Buyer shall, without prejudice to its other rights and remedies, be entitled to treat the Supplier as having committed an irremediable material breach of the Contract.
- (d) In ascertaining the extent of any failures in accordance with Clause 4.3(a):
  - (i) failures which are already the subject of a Level One Failure and in respect of which there is a Rectification Plan Process shall not be counted in determining if a Level Two Failure has occurred; and
  - (ii) failures which are the subject of a Level One Failure, but which are not the subject of a Rectification Plan Process shall be capable of being counted in determining if a Level Two Failure has occurred.
- (e) The Supplier must co-operate with the Buyer and third-party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (f) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (g) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (h) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (i) NOT REQUIRED
- (j) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (k) The Buyer is entitled to withhold payment for partially or undelivered Services but doing so does not stop it from using its other rights under the Contract.

## **5 Pricing and payments**

5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within ninety (90) days from when the charges are due.

5.2 All Charges:

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

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- (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
  - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
  - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with Clause 11.6 (a). Any disputed amounts shall be resolved through the dispute resolution procedure detailed in Clause 33.
- 5.6 The Buyer may not retain or set off payment of any amount owed to it by the Supplier.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full in accordance with the agreed payment terms between the Supplier and the subcontractor upon receipt of a valid, undisputed invoice.

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

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
  - (a) the Buyer cannot terminate the Contract under Clause 11;
  - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
  - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
  - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
  - (a) gives notice to the Buyer within ten (10) Working Days of becoming aware;
  - (b) demonstrates that the failure only happened because of the Buyer Cause; and
  - (c) mitigates as far as reasonably possible the impact of the Buyer Cause.

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**7 Record keeping and reporting**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven (7) years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises during business hours and, where possible, upon providing the Supplier not less than five (5) Working Days' notice to verify all Contract accounts and records of everything to do with the Contract and provide copies for the audit. Such audits shall be limited to one (1) in every twelve (12) month period except where:
- (a) the Buyer reasonably believes that the Supplier is in breach of any of its obligations set out in this Contract; or
  - (b) the Buyer is required by Law or otherwise by a Central Government Body, to procure the carrying out of an audit on the Supplier or is otherwise itself subject to an audit and that necessitates the carrying out of an audit of the Supplier,

**("Additional Audits")**

and such Additional Audits shall be carried out in accordance with Clause 7.3.

- 7.4 The Supplier must provide information to the auditor and reasonable cooperation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
  - (b) propose corrective action;
  - (c) provide a deadline for completing the corrective action.
- 7.6 Any Additional Audits carried out pursuant to Clause 7.3(b) shall be carried out at the cost of the Buyer save where the results demonstrate failures by the Supplier, in which case the Supplier shall bear the costs.
- 7.7 In conducting the audit, Buyer shall use and procure that any auditor appointed by it shall use reasonable efforts to minimise any disruption to Supplier's business and operations.

**8 Supplier staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;

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- (b) be vetted using Good Industry Practice;
  - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 NOT REQUIRED
- 8.3 NOT REQUIRED
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.6 NOT REQUIRED
- 9 Rights and protection**
- 9.1 The Supplier warrants and represents that:
  - (a) it has full capacity and authority to enter into and to perform the Contract;
  - (b) the Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
  - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
  - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
  - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in Clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
  - (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract; and
  - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third-party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

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**10 Intellectual Property Rights (IPRs)**

- 10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it and its sub-licensees to both:
- (a) receive and use the Deliverables;
  - (b) use the New IPR.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.
- 10.3 Where a Party acquires ownership of intellectual property rights 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.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in Clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- (a) obtain for the Buyer the rights in Clauses 10.1 and 10.2 without infringing any third-party intellectual property rights;
  - (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

**11 Ending the contract**

- 11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.
- 11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

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## 11.3 Ending the Contract or a Statement of Work without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than ninety (90) days' written notice and if the Contract is terminated, Clauses 11.5(b) to 11.5(g) apply.

The Buyer has the right to terminate a Statement of Work at any time without reason or liability by giving the Supplier not less than 30 days' written notice and if it's terminated clause 11.5(b) to 11.5(g) applies.

## 11.4 When the Buyer and the Supplier can end the Contract

- (a) If any of the following events happen, the Contract may be terminated immediately in whole or in part by written notice:
  - (i) by the Buyer, if there's a Supplier Insolvency Event;
  - (ii) by the Buyer if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
  - (iii) by either Party if the other Party is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of being required to so do by the Party not in breach specifying the breach and requiring it to be remedied;
  - (iv) by the Buyer if there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - (v) by the Buyer if the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57 (2) of the Regulations at the time the Contract was awarded;
  - (vi) by the Buyer if the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
  - (vii) by either Party if the other Party or its affiliates embarrass or bring the other Party into disrepute or diminish the public trust in them.
- (b) If any of the events in 73 (1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and Clauses 11.5(b) to 11.5(g) apply.

## 11.5 What happens if the Contract ends

Where the Buyer terminates the Contract under Clause 11.4(a) all of the following apply:

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- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract as long as the Buyer provides a fully itemised and costed schedule with evidence and the maximum value is limited in accordance with Clause 12;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately save in relation to any Deliverables provided prior to the date of termination;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly provide a copy of all Government Data to the Buyer and following written confirmation of receipt of the copy of the Government Data from the Buyer, the Supplier shall promptly delete the Government Data except where required to retain copies by Law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re procurement;
- (g) the following Clauses survive the termination of the Contract: 3.2, 6, 10, 7.2, 9, 11, 14, 15, 16, 17, 18, 33 and 34 and any Clauses which are expressly or by implication intended to continue.

## 11.6 When the Supplier can end the Contract

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over ten percent (10%) of the total Contract value or one thousand pounds (£1,000), whichever is the lower, within thirty (30) days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under Clause 11.6(a):
  - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
  - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses if the Supplier provides a fully itemised and costed schedule with evidence, the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
  - (iii) Clauses 11.5(d) to 11.5(g) apply.

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**11.7 Partially ending and suspending the Contract**

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with Clause 24) any necessary variation required by Clause 11.6, but the Supplier may not either:
  - (i) reject the variation;
  - (ii) increase the Charges, except where the right to partial termination is under Clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 11.6.

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

- 12.1 Subject to clause 12.3 and 12.4 each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than one hundred and twenty-five percent (125%) of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
  - (a) any indirect losses; or
  - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 Notwithstanding Clause 12.1, neither Party limits or excludes any of the following:
  - (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
  - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - (c) any liability that cannot be excluded or limited by Law.
- 12.4 Notwithstanding Clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses ,9.3, 13.2or 30.2(b).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

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- 12.7 Where the Buyer receives any notice of any claim for which it appears that it is or may become entitled to indemnification under this Contract ("**Claim**"):
- (a) the Buyer shall give notice in writing to the Supplier that it has received a Claim as soon as reasonably practicable and in any event within fifteen (15) Working Days of receipt of such Claim; and
  - (b) the Supplier shall be entitled to assume conduct of such Claim. Where the Supplier does assume conduct of a Claim the Buyer shall not make any admission in relation to any Claims which could be prejudicial to the defence or settlement of such Claim.

### 13 Obeying the Law

- 13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing 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) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
  - (b) support the Buyer in fulfilling its Public Sector Equality duty under Section 149 of the Equality Act 2010; and
  - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment.
- 13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable Law to do with the Contract.
- 13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32.

### 14 Government Data

- 14.1 The Supplier must not during the Term remove any ownership or security notices in or relating to the Government Data.
- 14.2 The Supplier must throughout the Term make accessible back-ups of all Government Data, stored in an agreed off site location.
- 14.3 The Supplier must ensure that any Supplier system holding any Government Data during the Term, including back up data, is a secure system that complies with the security requirements specified in writing by the Buyer.
- 14.4 If at any time during the Term the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.

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

- a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
- b) restore the Government Data itself or using a third party.

14.6 The Supplier must pay each Party's reasonable costs of complying with Clause 14.5 unless the Buyer is at fault.

14.7 During the Term the Supplier:

- a) must provide the Buyer with all Government Data in an agreed open format within ten (10) Working Days of a written request;
- b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- d) securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it;
- e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 14.

## 15 What you must keep confidential

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
- (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;

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- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
- (f) to its auditors or for the purposes of regulatory requirements;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis;
- (h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract conditional upon;

- a) the Supplier imposing confidentiality obligations on the Supplier Staff in respect of the Confidential Information which are no less onerous than those set out in this Clause 15. Where the Supplier Staff are employees, directors and/or agents of a subcontractor, the Supplier shall procure that the subcontractor imposes such confidentiality obligations on the employees, directors and/or agents; and
- b) the Supplier being liable to the Buyer in respect of any failure of any Supplier Staff to comply with the obligation in this Clause 15 and /or to maintain the confidentiality of the Confidential Information.

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

- c) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
- d) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
- e) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- f) where requested by Parliament;

under Clauses 5.7 and 16.

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

15.6 Information which is exempt from disclosure by Clause 16 is not Confidential Information.

15.7 Save where the Buyer is required to do so in order to comply with a legal or regulatory requirement, the parties must not make any press announcement or publicise the Contract, the Deliverables or any part of it in any way, without the prior written consent of the other Party and must take all reasonable steps to ensure that any parties

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who are engaged by the parties which is connected in any way to this Contract do not either.

**16. When you can share information**

16.1 The Supplier must tell the Buyer within forty-eight (48) hours if it receives a Request For Information.

16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:

- (a) comply with any Freedom of Information Act ("**FOIA**") request;
- (b) comply with any Environmental Information Regulations ("**EIR**") request.

16.3 The Buyer may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

16.4 The Buyer acknowledges that the Supplier is required to comply with the EIRs and accordingly, shall comply with the obligations in Clauses 16.1 to 16.3 (inclusive) to the extent relevant to the EIRs.

**17. Invalid parts of the contract**

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

**18. No other terms apply**

18.1 The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

**19. Other people's rights in a contract**

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

**20. Circumstances beyond your control**

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

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

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

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20.3 Either Party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

20.4 Where a Party terminates under Clause 20.2:

- (a) each Party must cover its own losses;
- (b) Clause 11.5(b) to 11.5(g) applies.

**21. Relationships created by the contract**

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

**22. Giving up Contract rights**

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

**23. Transferring responsibilities**

23.1 Neither Party can assign, transfer, mortgage, charge or deal any or all of its rights and/or obligations under the Contract without obtaining the other Party's prior written consent.

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

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

23.4 NOT REQUIRED

23.5 The parties remain responsible for all acts and omissions of their employees, agent, subcontractors and appointed third parties as if they were its own.

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

- (a) their name;
- (b) the scope of their appointment;
- (c) the duration of their appointment.

**24. Changing the contract**

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

**25. How to communicate about the contract**

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

25.2 Notices to the Buyer or Supplier must be sent to their address in the Order Form.

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

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

26.1 The Supplier shall not:

- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
- (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.

26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in Clause 26.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

26.3 If the Supplier or the Staff engages in conduct prohibited by Clause 26.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:

- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
- (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

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

27.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

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- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
- (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

27.2 The Supplier must take all necessary steps (pursuant to the decision of the court or tribunal referred to below), and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

**28. Health and safety**

28.1 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding health and safety.

**29. NOT APPLICABLE****30. TAX**

30.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

30.2 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
- (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Expiry Date or in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

30.3 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with Clause 30.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;

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- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 30.2 or confirms that the Worker is not complying with those requirements;
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

**31. CONFLICT OF INTEREST**

- 31.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict 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.
- 31.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 31.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

**32. Reporting a breach of the contract**

- 32.1.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of Law, Clause 13.1, or Clauses 26 to 31.
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 32.1.

**33. Resolving disputes**

- 33.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within twenty-eight (28) days of a written request from the other Party, meet in good faith to resolve the dispute.
- 33.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using Clauses 33.3 to 34.
- 33.3 Unless the Buyer refers the dispute to mediation using Clause 33.2, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the dispute;
  - (b) grant interim remedies;
  - (c) grant any other provisional or protective relief.
- 33.4 The Supplier cannot suspend the performance of the Contract during any dispute.

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### **34. Which law applies**

34.1 This Contract and any issues arising out of, or connected to it, are governed by English law and the parties shall submit to the exclusive jurisdiction of the English Courts.

## **Appendix 1**

### **Rectification Plan Process**

#### **1.0 THE RECTIFICATION PLAN**

- 1.1 The Supplier shall provide a Rectification Plan alongside any additional documentation that the Buyer requires within five (5) Working Days of being notified by the Buyer that a Rectification Plan is required.
- 1.2 When the Buyer receives a requested Rectification Plan it can either:
  - 1.2.1 reject the Rectification Plan, giving reasons; or
  - 1.2.2 accept the Rectification Plan (without limiting its rights) in which case the Supplier must as soon as reasonably practicable start work on the actions in the Rectification Plan and the costs of doing so shall be borne in accordance with paragraph 1.4.
- 1.3 Where the Rectification Plan is rejected, without prejudice to paragraph 2.1, the Buyer:
  - 1.3.1 shall meet with the Supplier within two (2) Working Days of rejecting the Rectification Plan and give reasonable grounds for its decision; and
  - 1.3.2 may request that the Supplier provides a revised Rectification Plan within three (3) Working Days of that meeting.
- 1.4 The Supplier confirms that to the best of its knowledge, information and belief, the nature and extent of the resources required to deliver the Services in accordance with the Contract have been costed and reflected in Annex 5 (Schedule of Costs and Rates) other than:
  - 1.4.1 contingency costs to cover unforeseen events (such as (but not limited to) widespread Worker illness or a vehicle being out of commission for a period of time),
  - 1.4.2 any increase in scope (including, without limitation, additional test sites) FOLLOWING THE DATE OF THE CONTRACT or
  - 1.4.3 other amendment to the Services as agreed with the Buyer FOLLOWING THE DATE OF THE CONTRACT.

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Accordingly, any costs to be incurred by the Supplier in order to deliver the Rectification Plan shall be:

1.4.4 detailed within the Rectification Plan; and

1.4.5 payable:

1.4.5.1 by the Supplier to the extent they are included within the costing and resourcing in Annex 5 (Schedule of Costs and Rates); and

1.4.5.2 otherwise by the Buyer where those costs are outside of the scope of or are in addition to the costing and resourcing in Annex 5 (Schedule of Costs and Rates).

## 2.0 ESCALATING ISSUES

2.1 If the Buyer rejects a Rectification Plan or if the Supplier fails to:

2.1.1 submit a Rectification Plan within the timescales set out in paragraphs 1.1 or 1.3; or

2.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default;

the Buyer can require the Supplier to attend a meeting between Deputy Director – Environmental Monitoring for Health Protection and Director of Water Recycling (an "Escalation Meeting") on not less than five (5) Working Days' notice. The parties shall mutually agree the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Key Personnel attend.

2.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than two (2) Working Days, either Party may treat the matter as a dispute to be handled in accordance with Clause 33.3.

2.3 A breach by the Supplier of any of its obligations in this paragraph 2 shall be treated as a material breach for the purposes of Clause 11.4(a)(iii).

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## Rectification Plan Template

| Request for [Revised] Rectification Plan                 |                                                                                                   |                  |
|----------------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------|
| Details of the default:                                  | [ <b>Guidance:</b> Explain the default, with clear schedule and clause references as appropriate] |                  |
| Deadline for receiving the [Revised] Rectification Plan: | [add date (minimum ten (10) days from request)]                                                   |                  |
| Signed by Buyer :                                        |                                                                                                   | Date:            |
| Supplier [Revised] Rectification Plan                    |                                                                                                   |                  |
| Cause of the default:                                    | [add cause]                                                                                       |                  |
| Anticipated impact assessment:                           | [add impact]                                                                                      |                  |
| Actual effect of default:                                | [add effect]                                                                                      |                  |
| Steps to be taken to rectification:                      | <b>Steps</b>                                                                                      | <b>Timescale</b> |
|                                                          | 1.                                                                                                | [date]           |
|                                                          | 2.                                                                                                | [date]           |
|                                                          | 3.                                                                                                | [date]           |
|                                                          | 4.                                                                                                | [date]           |
|                                                          | [...]                                                                                             | [date]           |
| Timescale for complete Rectification of default:         | [X] Working Days                                                                                  |                  |
| Steps taken to prevent recurrence of default:            | <b>Steps</b>                                                                                      | <b>Timescale</b> |
|                                                          | 1.                                                                                                | [date]           |
|                                                          | 2.                                                                                                | [date]           |
|                                                          | 3.                                                                                                | [date]           |
|                                                          | 4.                                                                                                | [date]           |

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|                                                                              |                                                          |                                |  |
|------------------------------------------------------------------------------|----------------------------------------------------------|--------------------------------|--|
|                                                                              | [...]                                                    | [date]                         |  |
| Are the steps covered by the costs in Annex 5 (Schedule of Costs and Rates). | [yes/no]                                                 | If no include details of costs |  |
| Signed by the Supplier:                                                      |                                                          | Date:                          |  |
| <b>Review of Rectification Plan Buyer</b>                                    |                                                          |                                |  |
| Outcome of review:                                                           | [Plan Accepted] [Plan Rejected] [Revised Plan Requested] |                                |  |
| Reasons for rejection (if applicable):                                       | [add reasons]                                            |                                |  |
| Signed by Buyer                                                              |                                                          | Date:                          |  |

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**Appendix 2  
Step In****3.0**

- 3.1 If the circumstances outlined in Clauses 4.3(a) or 4.3(b) which entitle the Buyer to exercise Step In Rights occur, the Buyer may give notice to the Supplier (a **"Step In Notice"**) that it will be taking action in accordance with this Appendix 2 (Step In) and setting out:
- 3.1.1 whether it will be taking action itself or with the assistance of a third party;
  - 3.1.2 what action the Buyer will take and the nature and extent of the services it will control (the "Required Action") during the process (**"Step In Process"**);
  - 3.1.3 when the Required Action will begin and how long it will continue for;
  - 3.1.4 whether the Buyer will require access to the Supplier's sites; and
  - 3.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 3.2 For as long as the Required Action is taking place:
- 3.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
  - 3.2.2 the Buyer will pay the Charges to the Supplier for any Deliverables which are provided by the Supplier after subtracting any applicable costs incurred by the Buyer of taking the Required Action; and
  - 3.2.3 subject to compliance with confidentiality and health and safety policies and any other policies or procedures which it is necessary for the Buyer or any appointed third parties to comply with in order to ensure that the discharge by the Supplier of its regulatory obligations is not adversely affected by the Required Action, the Supplier shall provide the Buyer and any third parties appointed by it with adequate access to its sites, assets and personnel to enable the Buyer to obtain the Deliverables in accordance with the Contract.
- 3.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under this Step-In Process and within ten (10) Working Days of this notice the Supplier will develop a draft plan detailing the process to affect the resumption of the provision of the Deliverables by the Supplier (**"Step-Out Plan"**) for the Buyer to approve.
- 3.4 If the Buyer does not approve the draft StepOut Plan, the Buyer will give reasons and the Supplier will revise the draft StepOut Plan and resubmit it for approval.

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- 3.5 Any breach by the Supplier of any of its obligations in this Appendix 2 (Step In) shall be treated as a material breach for the purposes of Clause 11.4(a)(iii).