

Department for Health & Social Care  
39 Victoria Street  
Westminster  
London  
SW1H 0EU

Sigma Pharmaceuticals plc  
HD House  
Imperial Way  
Watford  
WD24 4BB

Attn: [REDACTED]  
By email to [REDACTED]

Date: 30<sup>th</sup> April 2021  
Your ref: LFT DIST  
Our ref: [CCR612]

Dear Sirs,

**Supply of logistics services for delivery of LFD devices to pharmacies**

We are pleased to confirm our intention to award this contract to you.

The attached contract details ("**Order Form**") and the Annexes set out the terms of the contract between The Secretary of State for Health and Social Care and Sigma Pharmaceuticals plc for the provision of the services set out in the Order Form.

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the services. Please confirm your acceptance of the Conditions by signing and returning the Order Form to **[insert name]** at the above address. No other form of acknowledgement will be accepted. Please remember to include the reference number above in any future communications relating to this contract.





We will then arrange for Order Form to be countersigned which will create a binding contract between us.

Yours faithfully,

# Order Form

1. Contract Reference	[CCR612]
2. Date	30 <sup>th</sup> April 2021
3. Buyer	The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1H 0EU acting as part of the Crown
4. Supplier	<p>Sigma Pharmaceuticals plc</p> <p><i>Registered Address: First Floor, Roxburghe House, 273-287 Regent Street, London, W1B 2HA</i></p> <p><i>Registration Number: 1561802</i></p>
5. The Contract	<p>The Supplier shall supply the deliverables described below ("<b>Deliverables</b>") on the terms set out in this Order Form and the contract terms and conditions set out in Annex 3 ("<b>Conditions</b>") and Annex 1 (Specification) and Annex 2 (Charges).</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.</p> <p>If there is 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>
6. Deliverables	<p>The Services set out in the Specification.</p> <p>The stock loss tolerance shall be up to 1% of the total Goods supplied to the Supplier by value over the Term.</p> <p>The on time and in full delivery KPI shall be 98.5% of agreed deliveries in any week during the Term.</p>
7. Sub-Contractors	DX / Polarspeed
8. Specification	The specification of the Deliverables is as set out in Annex 1.
9. Term	<p>The Term shall commence on the date on which the Contract is signed by the Parties ("<b>Effective Date</b>") and the Expiry Date shall be 28 June 2021, unless the Contract is:</p> <ul style="list-style-type: none"> <li>extended by agreement of the Parties, such extension term to be of a period no greater than 1 month; or</li> <li>otherwise terminated earlier in accordance with the terms and conditions of the Contract.</li> </ul>

<b>10. Charges</b>	The Charges for the Deliverables shall be as set out in Annex 2.		
<b>11. Payment</b>	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:  [REDACTED]</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, the Buyer will send the Supplier a unique PO Number. The Supplier must be in receipt of a valid PO 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 PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If the Supplier has a query regarding an outstanding payment please contact the Buyer's Accounts Payable section by email to  [REDACTED]</p>		
<b>12. Buyer Authorised Representative(s)</b>	<p>For general liaison your contact will be  [REDACTED]</p> <p>or, in their absence,  [REDACTED]</p>		
<b>13. Address notices for</b>	<table border="0"> <tr> <td data-bbox="579 1312 1050 1628"> <b>Buyer:</b>   The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1H 0EU   Attention: [REDACTED]   Email: [REDACTED] </td><td data-bbox="1050 1312 1493 1628"> <b>Supplier:</b>   Sigma Pharmaceuticals plc, HD House, Imperial Way Watford, WD24 4BB   Attention: [REDACTED]   Email: [REDACTED] </td></tr> </table>	<b>Buyer:</b>  The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1H 0EU  Attention: [REDACTED]  Email: [REDACTED]	<b>Supplier:</b>  Sigma Pharmaceuticals plc, HD House, Imperial Way Watford, WD24 4BB  Attention: [REDACTED]  Email: [REDACTED]
<b>Buyer:</b>  The Secretary of State for Health and Social Care of 39 Victoria St, Westminster, London SW1H 0EU  Attention: [REDACTED]  Email: [REDACTED]	<b>Supplier:</b>  Sigma Pharmaceuticals plc, HD House, Imperial Way Watford, WD24 4BB  Attention: [REDACTED]  Email: [REDACTED]		

Signed for and on behalf of the Supplier		Signed for and on behalf of the Buyer	
		Name: [Insert name]	
		[Insert job title]	
Date: 30/04/21		Date: 30/4/21	
		Signature:	

**Sigma Pharmaceuticals plc**

HD House  
Imperial Way  
Watford, WD24 4LQ  
Tel :- +44 1923 444 999  
Fax :- +44 1923 444 998  
VAT No :- GB 225 9280 57

## Annex 1 – Specification

### 1. OVERVIEW

- 1.1 The Test & Trace programme requires UK logistics capabilities to enable the storage and outbound distribution capabilities of rapid testing to support the Government's ambition to scale up and increase the volume of testing available across all pharmacies in England from April 2021.
- 1.2 The service required has the following component parts:
  - 1.2.1 Receipt, stock management and warehousing of complete Lateral Flow Device (LFD) kits (referred to in the Contract as "**Kits**" and "**Goods**"). The Kits shall be delivered to the Supplier in cartons, with each carton consisting of an outer box of 5 layer corrugated paper with dimensions not to exceed 500x290x405 and 12kg containing up to 54 inner test boxes of 7 LFDs (referred to in this Contract as a "**Carton**");
  - 1.2.2 Temperature monitored warehousing and held within the required temperature range of 2 - 30 °C;
  - 1.2.3 Receiving ordered stock of Kits from the Buyer and the picking, packing and labelling of each order to be sent to pharmacies. Ordered stock from the Buyer shall be Cartons on pallets;
  - 1.2.4 Loading and despatch of Cartons to pharmacy locations in England using the Supplier's existing delivery network, in line with existing scheduled deliveries;
  - 1.2.5 Provision of daily operational management information relating to stock control order status and delivery tracking; and
  - 1.2.6 Handling queries and complaints from pharmacies relating to the Supplier's provision of the Services.
- 1.3 An overall need of the Buyer in setting up the Contract is to ensure that the Buyer can manage their requirements and outputs in a way that:
  - 1.3.1 increases the Buyer organisation's efficiency;
  - 1.3.2 promotes the use of 'best practice' in the Mass Testing Program Order fulfilment;
  - 1.3.3 reduces the Buyer's costs and process cycle times;
  - 1.3.4 drives maximum savings; and
  - 1.3.5 reduces the Buyer's impact on the environment.
- 1.4 The Supplier shall ensure full visibility of the supply chain to the Buyer and, as a minimum:
  - 1.4.1 Use of subcontractors.
    - 1.4.1.1 Any subcontractors used will represent Buyer and therefore must meet all of the relevant standards required.
    - 1.4.1.2 subject to paragraph 1.5, the Buyer must be notified in advance in writing of any proposed subcontractors.

- 1.5 The Supplier shall provide all of the requirements in respect of the Contract, as detailed. The Contract does permit the Supplier to subcontract elements (but not the whole of the required Deliverables) to the approved sub-contractors named in the Order Form. If the Supplier wishes to utilise the services of any sub-contractor over and above those named in the Order Form, it may only do so with the prior written consent of the Buyer (such consent not to be unreasonably withheld and/or delayed).
- 1.6 Critical to the success of the Contract are:
- 1.6.1 appropriate services that achieve efficiencies;
  - 1.6.2 compliance with standards, security and confidentiality requirements;
  - 1.6.3 excellent management information (as detailed in the Contract) that delivers an immediate and clear picture of stock holding and stock delivered;
  - 1.6.4 outstanding service, determined by what the Buyer needs;
  - 1.6.5 relationships that identify and focus on the priorities that deliver excellence in public service and value;
  - 1.6.6 proactive strategies that analyse and report potential areas for increased efficiency and sustainability; and
  - 1.6.7 strategies that facilitate business transformation in order to produce and reduce overall costs in the supply chain.
- 1.7 All volumes are current best estimate and provided purely for information purposes only.

## **2. SCOPE OF REQUIREMENT**

- 2.1 The Supplier must be able to receive and store [REDACTED] basis during the Term across a maximum of three deliveries per week, save that if the Supplier or Buyer requires:
- 2.1.1 a higher number of pallets to be received or stored by the Supplier in order to service pharmacy demand, then this will be by agreement of both Parties; and/or
  - 2.1.2 a change to the number of deliveries per week, this shall be agreed in advance between the Parties.
- 2.2 The Supplier must use the Salesforces order management portal (access to which has been provided to the Supplier by the Buyer) ("**Salesforce Portal**") to request stock of the Goods. Where for technical reasons the Salesforce Portal is not available to the Supplier, the Supplier shall cooperate and work with the Buyer to agree a manual workaround for the ordering of stock.
- 2.3 The Supplier must have the ability to pick and pack Cartons and have the ability to deliver Cartons [REDACTED] within England at the required volumes during the Term of the Contract. The volume of Cartons per order will be based on demand from the individual pharmacies. The Supplier shall ensure that it picks the stock to fulfil orders for delivery to a pharmacies on a first in first out basis.

- 2.4 Subject to receipt by the Supplier of the Goods from the Buyer (or the Buyer's supplier), the Supplier must be able to dispatch and deliver orders within 3 days from order receipt from the pharmacy to pharmacy locations across England.
- 2.5 The Supplier must be able to make all deliveries within the opening hours of the relevant pharmacies.
- 2.6 The Supplier shall deliver to pharmacies once daily during week days and, for pharmacies that are registered with the Supplier for Saturday deliveries, once a day on Saturday. For the avoidance of doubt, the Supplier shall determine in its sole discretion whether the delivery is made in an AM. or PM. delivery.
- 2.7 The Supplier will meet the operational, regulatory and quality requirements requested by the Buyer as laid out, and not restricted to, the sections detailed below.
- 2.8 The Supplier must ensure that a risk assessment of warehouse processes has been completed. The Buyer reserves the right to request copies of the risk assessment.
- 2.9 The Supplier must have a business continuity plan in place to address risks identified through a prioritised risk assessment.

### **3. DETAILED REQUIREMENT – WAREHOUSING**

#### **3.1 Inbound**

- 3.1.1 The Supplier must ensure the Kits are receipted and available for picking within 8 hours of the Kits being delivered provided that the Kits have been delivered to the Supplier within its standard goods-in receiving hours as notified to the Buyer.
- 3.1.2 The Supplier must have the ability to provide a goods receipt to inventory management system/ warehouse management system ("WMS").
- 3.1.3 The Supplier must ensure each of the received pallets is affixed with a physical form of identification (i.e. labels, barcode).
- 3.1.4 The Supplier must have the ability to perform visual inspections for paperwork and damages.
- 3.1.5 The Supplier must have the ability to refuse delivery or quarantine Kits failing visual inspection.
- 3.1.6 The Buyer reserves the right to perform basic product spot checks either directly or through a 3rd party supplier (providing suitable notice to and training of the Supplier) where the Buyer has reasonable concern that the Supplier is in breach of its obligations under this Agreement, otherwise any visit shall be conducted on reasonable notice with the agreement of the Supplier.
- 3.1.7 The Kits shall be delivered on standard 4 way UK (Chep equivalent) pallets to a max height of 1.68m.

#### **3.2 Storage of Kits**

- 3.2.1 All deliveries of Kits are to be stored in racked pallets.
- 3.2.2 The Supplier should ensure sufficient capacity to meet loading/ offloading schedules agreed with the Buyer to ensure compliance with order demand

and to avoid demurrage and detention of vehicles (and extended put away times).

3.2.3 Unless further advised, pallets will not be block stacked nor be stacked on each other save that the Supplier may double stack pallets where it is reasonable and safe to do so, and such double stack does not cause damage to the Kits.

3.2.4 The Supplier must protect the integrity of the Kits at all times, including:

3.2.4.1 maintaining storage locations to hygiene and pest control standards;

3.2.4.2 keeping the Goods in compliance with storage conditions; and

3.2.4.3 keeping the Goods secure (physical location and whilst in transit).

3.2.5 The Supplier must ensure all Kits in transport and storage are distributed in accordance with temperature controlled conditions for pharmaceutical products in accordance with good distribution practice as determined by the Medicines and Healthcare products Regulatory Agency ("**Good Distribution Practice**").

### 3.3 Kits Storage - Inventory Management

3.3.1 The Supplier must have the ability to track inventory and share inventory data with the Buyer on a regular basis of Goods within the Supplier's network.

3.3.2 The Supplier must have the ability to implement a stock control process for control of stock either recalled, expired or obsolete.

3.3.3 Inventory accuracy will be maintained through a documented process, allowing for perpetual inspection (or similar) and reconciliation process for understanding all discrepancies.

### 3.4 Kits Storage - Non-compliant Goods handling

3.4.1 The Supplier must ensure that an appropriate quality control inbound inspection takes place. This covers the following activities;

i. Receiving Goods (quantity and external check for damage against PO, ASN and / or delivery documentation);

ii. Documenting key information upon receipt; and

iii. QC inspection and recording of data.

3.4.2 The Supplier must have the ability to demonstrate a process to identify non-compliant Goods at their distribution centre.

3.4.3 The Supplier must have the ability to segregate non-compliant Goods from other quality approved Goods electronically (using WMS) and physically to ensure Goods are blocked from further entering the downstream supply chain process.

3.4.4 The Supplier must communicate to the Buyer the discovery of non-compliant Goods and seek further guidance. The agreed corrective action may include the actions listed below between Buyer and Supplier:



- i. Return to the supplier of Goods and/or the Buyer by making available the non-compliant Goods for collection by the Buyer and/or the Buyer's supplier;
- ii. Arrange with relevant suppliers for on-site resolution for non-compliant Goods;
- iii. Collection of those non-compliant items; and/or
- iv. If Goods need to be destroyed, a destruction certificate must be made available by the distribution centre. The Buyer will pay the Supplier's reasonable costs of destruction (to be agreed by the Parties in advance each acting in good faith).

#### **4. DETAILED REQUIREMENT – TRANSPORT Requirement - Transport**

##### **4.1 Transportation Optimisation and Execution**

- 4.1.1 The Supplier must be able to utilise their existing storage and transportation network to satisfy orders for their existing pharmacy customer base.
- 4.1.2 The Supplier's system must be able to receive orders from pharmacies. Orders will be based on a pull system from pharmacies. For the avoidance of doubt, during the initial stock provision, the Supplier shall not be subject to the obligations of clause 2.4 where pharmacy demand exceeds supply of Goods into the Supplier.
- 4.1.3 The Supplier must be able to package and dispatch the Goods for delivery to pharmacy addresses across England.
- 4.1.4 The Supplier must deliver the products to pharmacy addresses in England, ensuring delivery is during agreed delivery windows.
  - i. The Supplier must have the ability to track when deliveries have been dispatched from their regional distribution centres to pharmacy addresses and then track when delivery has been completed.
- 4.1.5 The Supplier must provide Information on Delivery (IOD) confirmation to the Buyer through an agreed system. Information to be provided includes:
  - 4.1.5.1 Pharmacy/postcode;
  - 4.1.5.2 number of cartons of Goods ordered;
  - 4.1.5.3 date of order; and
  - 4.1.5.4 date of delivery.
- 4.1.6 The Supplier must ensure all Goods in transport and storage are distributed in accordance with temperature controlled conditions for pharmaceutical products in accordance with Good Distribution Practice.

#### **5. REGULATORY REQUIREMENTS Requirements**

- 5.1 The Supplier must meet all regulatory requirements (e.g. Medicines and Healthcare products Regulatory Agency ("MHRA")) and quality guidelines relating to the Goods

and their storage and transportation defined by the Buyer and have the necessary certifications in place.

5.2 The Supplier must be compliant to Good Distribution Practice standards including the 2013 MHRA guidelines.

5.3 The Supplier will provide the Services so as to protect the integrity of the Goods at all times, including:

5.3.1 keeping the Goods in compliance with the storage conditions set out in the Contract;

5.3.2 keeping the Goods secure (physical location); and

5.3.3 keeping the Goods secure whilst in transit.

## **6. MANAGEMENT INFORMATION/REPORTING**

6.1 The Supplier must have the ability to report the volume of damaged Goods vs volume of inbound deliveries.

6.2 The Supplier must have the ability to generate a report of inventory levels.

6.3 The Supplier must have the ability to report on deliveries achieved and due.

6.4 The Supplier must have the ability to report on proof of deliveries if reasonably requested by the Buyer in order to aid invoicing and reconciliation (both in terms of the payments due to the Supplier under this Contract but also any payments due from the Buyer to pharmacies for the onward supply of the Kits).

6.5 The Supplier must be able to report by exception on late, rescheduled, and refused deliveries.

6.6 The Supplier must have the ability to share data and should provide near real-time data to the Buyer relating to stock control, orders fulfilled/delivered and incidents.

## **7. RECORDS**

7.1 The Supplier shall keep adequate records, including records of pharmacies and sub-contractors to whom Goods have been distributed.

## **8. VALIDATION OF PROCESSES of processes**

8.1 The Supplier shall have validation processes in place where the resulting output cannot be or is not verified by subsequent monitoring or measurement. Validation shall demonstrate the ability of these processes to achieve planned results consistently.

8.2 The Supplier shall include key critical steps for validation such as: goods-in, storage, order processing and dispatch.

## **9. TRAINING**

9.1 The Supplier shall have appropriate personnel with suitable training and experience to adequately conduct their assigned duties.

**10. STAFF AND CUSTOMER SERVICE**

- 10.1 The Supplier shall provide a sufficient level of resource throughout the Term in order to consistently deliver a quality service.
- 10.2 The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard.
- 10.3 The Supplier shall ensure that staff understand the Buyer's vision and objectives and will provide excellent customer service to the Buyer throughout the Term.

## Annex 2 – Charges

### 1. Summary of Charges

- 1.1 The following charges shall apply to the delivery of the Services:
  - (a) [REDACTED]
- 1.2 All charges listed in section 1.1. are exclusive of VAT.
- 1.3 Payment shall only be made following satisfactory delivery of the Goods
- 1.4 Each invoice must include a detailed elemental breakdown of the Deliverables performed and the associated charges.
- 1.5 The Supplier shall invoice the Buyer monthly in arrears.
- 1.6 Payment of undisputed invoices shall be made by the Buyer within 30 days of the date of the invoice.
- 1.7 The Parties anticipate that the total value of the Charges payable by the Buyer to the Supplier shall [REDACTED] If at any time during the term of this Contract: (i) the Buyer considers (acting reasonably) that the Charges are likely to exceed the Anticipated Value; and/or (ii) the Anticipated Value is reached, the provision of the Services by the Buyer and the commitments of each Party in respect of the delivery of the Cartons shall be suspended as from the point of notification of suspension served by the Buyer on the Supplier in writing. Following such suspension, the Parties shall meet to discuss in good faith any and all necessary actions to be taken by each Party in order to resume (if required) the Services or to wind up the Services..

## Annex 3 - Conditions

### 1. Definitions used in the Contract

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

<b>"Buyer"</b>	means the person identified as the 'Buyer' in the Order Form;
<b>"Buyer Cause"</b>	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 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: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
<b>"Change Law"</b>	in means any change in Law which impacts on the supply of the Deliverables (including taxation or duties of any sort affecting the Supplier) which comes into force after the start date of the Contract set out in the Order Form;
<b>"Charges"</b>	means the charges for the Deliverables as specified in the Order Form;
<b>"Confidential Information"</b>	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which: (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
<b>"Contract"</b>	means the contract between (i) the Buyer and (ii) the Supplier which is created when the Supplier clicks to accept the Order Form through the Buyer's dynamic purchasing system and includes the Order Form and Annex 1 (Specification), Annex 2 (Charges) and Annex 3 (Terms and Conditions);
<b>"Controller"</b>	has the meaning given to it in the GDPR;
<b>"Data Protection Legislation"</b>	(i) the retained EU law version of the GDPR as enacted into English law (UK GDPR) and as revised and superseded from time to time; (ii) the Data Protection Act 2018 (DPA 2018) and as revised and superseded from time to time; (iii) Privacy and

	Electronic Communications Regulations 2003 and as revised and superseded from time to time; and (iv) any other laws and regulations relating to the Processing of Personal Data and privacy which apply to a Party and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority and expressly includes the common law duty of confidentiality;
<b>"Existing IPR"</b>	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>"Exit Day"</b>	has the meaning in the European Union (Withdrawal) Act 2018;
<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>	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: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) 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; iii) any failure or delay caused by a lack of funds; iv) any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union; and v) any event or other consequence arising as a result of or in connection with the COVID-19 pandemic except for circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Deliverables cannot be provided as set out in the Contract (in all material respects) without such Laws and/or government guidance being breached, or if the Supplier can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Deliverables due to the levels of COVID-19 infections in the population of the United Kingdom.
<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"Goods"</b>	means the goods supplied by the Buyer which are to be stored, transported and/or delivered by the Supplier under the Contract;
<b>"Good Industry"</b>	standards, practices, methods and procedures conforming to

<b>Practice"</b>	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>	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 generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Controller;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Information Commissioner"</b>	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>	in respect of a person: a) if that person is insolvent; ii) 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); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) 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; (v) if the financial position of a person deteriorates to such an extent that it jeopardises their ability to perform the Contract;
<b>"Law"</b>	means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>"New IPR"</b>	all and 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>"Order Form"</b>	means the letter from the Buyer to the Supplier printed above these terms and conditions;
<b>"Party"</b>	the Supplier or the Buyer (as appropriate) and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Legislation;
<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;

<b>"Regulations"</b>	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>	the services to be supplied by the Supplier to the Buyer under the Contract, such services forming part of the Deliverables;
<b>"Specification"</b>	the specification for the Deliverables as specified in the Order Form;
<b>"Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
<b>"Supplier Staff"</b>	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>	the person named as Supplier in the Order Form;
<b>"Term"</b>	the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be terminated in accordance with the terms and conditions of the Contract;
<b>"Third Country"</b>	any country other than the UK at the time of the transfer of the Personal Data;
<b>"VAT"</b>	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) ( <a href="https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policynote-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>"Working Day"</b>	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 the 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;
- 2.7 the word "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation"; and
- 2.8 any reference in the Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
  - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

## **3. How the Contract works**

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of the Deliverables are and remain true and accurate.

## **4. What needs to be delivered**

### **4.1 All Deliverables**

The Supplier must provide the 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 do not conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with, and in compliance with, all Laws.

### **4.2 Goods clauses**

- (a) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.
- (b) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- (c) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer and/or its suppliers suffer or incur any damage or injury (whether fatal or otherwise) occurring in the course of delivery then the Supplier shall indemnify and keep indemnified the Buyer from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its sub-suppliers.
- (d) Where the Buyer issues Goods free of charge to the Supplier such Goods shall be and remain the property of the Buyer and the Buyer shall not have, create and/or allow to be created any lien, charge, interest or security over the same. The Supplier irrevocably licences the Buyer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Goods. The Supplier shall take all reasonable steps to ensure that the title of the Buyer to the Goods and the exclusion of any such lien, charge, interest or security are brought to the notice of all sub-suppliers and other appropriate persons and shall, at the Buyer's request, store the Goods separately and ensure that they are clearly identifiable as belonging to the Buyer.
- (e) The Goods shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Buyer otherwise within five (5) Working Days of receipt.
- (f) Upon receipt of the Goods the Supplier shall subject them to
  - (i) a reasonable visual inspection.
- (g) Within a reasonable period the Buyer shall replace or re-issue issued Goods agreed by the Parties to be damaged.
- (h) The Supplier shall ensure the security of all the Goods whilst in its possession.
- (i) The Supplier shall be liable for all loss of, or damage to, the Goods (excluding fair wear and tear) which is in excess of the stock loss tolerance set out in the Order Form, unless such loss or damage was caused by the breach of the

Contract by the Buyer. The Supplier shall inform the Buyer within two (2) Working Days of any loss of, or damage to, the Goods occurring, and shall use all reasonable endeavours to minimise any such loss or damage.

- (j) In the event of liability under clause 4.2(i), the Supplier shall pay the Buyer an amount equal to the purchase price paid by the Buyer for the lost or damaged Goods in excess of the stock loss tolerance set out in the Order Form.

#### **4.3 Services clauses**

- (a) Breach of the on time in full delivery KPI set out in the Specification will be a default of the Contract. The Parties agree that, if there is any breach of the KPI, the Parties shall work together in good faith to identify the causes of the failure and the steps which the Supplier shall take to address the same.
- (b) 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.
- (c) 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.
- (d) The Supplier must allocate sufficient resources and appropriate expertise to the performance of the Contract.
- (e) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (f) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality.
- (g) 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 90 days from the end of the period to which the charges relate. If the Buyer does not receive the invoice within this 90 day period, the Buyer shall have no obligation to pay the affected, late invoiced Charges.
- 5.2 All Charges:
  - (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
  - (b) include all costs connected with the supply of Deliverables.

- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds 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; and
  - (b) includes the breakdown of Deliverables which have been delivered (if any), as specified in Annex 2 to the Contract.
- 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 11.5. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under the Contract if notice and reasons are provided.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

## **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 the Contract;
  - (c) the Supplier is entitled to additional time needed to deliver the Deliverables; and
  - (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 10 Working Days of becoming aware;
  - (b) demonstrates that the failure only happened because of the Buyer Cause; and
  - (c) mitigated the impact of the Buyer Cause.

## **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 as and when the Buyer reasonably requires (anticipated to be a weekly meeting). If such governance meetings identify any performance related issues, the Supplier shall prepare a remedial plan to correct the identified issues as soon as possible and the Parties shall jointly monitor its implementation and efficacy.

- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years (financial records) and five years (distribution records) after the date of creation.
- 7.3 The Supplier must allow (upon reasonable notice) any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract that is required to enable the Buyer to verify the Supplier's compliance with its obligations under the Contract and provide copies for the audit (provided always that the Supplier (acting reasonably) shall be entitled to redact any commercially sensitive information).
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation 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; and
  - (c) provide a deadline for completing the corrective action.
- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and
  - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

## **8. Supplier Staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified; and
  - (b) be vetted using Good Industry Practice; and
  - (c) comply with all conduct requirements for delivery to the delivery premises as notified to it when delivering the Goods.
- 8.2 If a Buyer decides (acting reasonably) that one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.

- 8.4 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.

## **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 does not 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 places an order for the Goods on the Buyer and/or 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.

## **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; and
  - (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 Buyer 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 the 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 by a third party against either of the Parties that alleges that any use of the Supplier's IPRs in connection with the Contract infringes that third party's rights 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; and/or
  - (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 Effective 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 Ending the Contract 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 30 days' written notice and, if it's terminated, clause 11.4(a) to 11.4(f) applies.
- 11.3 When the Buyer can end the Contract**
- (a) If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a termination notice in writing to the Supplier:
    - (i) there is a Supplier Insolvency Event;
    - (ii) 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) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
    - (iv) there is 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) 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; or
  - (vi) the Supplier or its affiliates embarrass or bring the Buyer 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 clause 11.4(a) to 11.4(f) applies.

#### **11.4 What happens if the Contract ends**

Where the Buyer terminates the Contract under clause 11.2, clause 11.3(a) or otherwise on expiry of the Contract all of the following apply:

- (a) the Buyer's payment obligations under the terminated Contract stop immediately, subject to all undisputed sums due from the Buyer at the date of termination being paid;
- (b) accumulated rights of the Parties are not affected;
- (c) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (d) the Supplier must promptly return any of the Buyer's property provided under the Contract (with the return of the Goods being addressed in accordance with clause 11.7;
- (e) 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; and
- (f) the following clauses survive the termination of the Contract: 4.2(c), 4.2(d), 4.2(i), 5, 7, 9.3, 10, 11, 12, 13.2, 14, 15, 16, 17, 18, 19, 25, 30.2(b), 33 and 34, and any clauses which are expressly or by implication intended to continue.

#### **11.5 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 within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 11.5(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 as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
  - (iii) clauses 11.4(b) to 11.4(f) apply.



#### **11.6 Partially ending and suspending the Contract**

- (a) If 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; and/or
  - (ii) increase the Charges, except where the right to partial termination is under clause 11.2.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.6.

#### **11.7 Goods on Termination**

- (a) On termination or expiry of the Contract, the Parties agree that:
  - (i) the Supplier shall complete the delivery of orders for the Goods it has received and accepted prior to the date of termination or expiry; and
  - (ii) any remaining stock of the Goods shall be (at the Buyer's option) returned to the Buyer (or to a third party nominated by the Buyer) by the Supplier, with the costs of the Supplier undertaking the same to be agreed between the Parties in advance. As an alternative, the Buyer may elect to collect the remaining Goods from the Supplier and the Supplier shall work with the Buyer in good faith to facilitate the same.

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

12.1

(a)

(b)

(c)

12.2

12.3

- (a) [REDACTED]
- (b) [REDACTED]
- 12.4 [REDACTED]
- 12.5 [REDACTED]
- 12.6 [REDACTED]
- 12.7 [REDACTED]

### 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://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.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 S149 of the Equality Act 2010;
  - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
  - (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-thegovernment-buying-standards-gbs>
- 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 12.1 and clauses 27 to 32.

- 13.4 "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations.

## **14. Data protection**

- 14.1 Each Party shall comply with all applicable requirements of the Data Protection Legislation whilst performing their respective obligations under this Agreement. This clause 14.1 is in addition to, and does not relieve, remove or replace a Party's obligations or rights under applicable Data Protection Legislation.
- 14.2 Without prejudice to the generality of clause 14.1, the Parties acknowledge and agree that only limited Personal Data (being the names and contact details of the relevant representatives at each Party (including the Supplier's Staff) who are involved in the administration, performance and management of this Agreement) may be shared between the Parties under or in connection with this Agreement. Both Parties shall comply with their respective obligations as individual Controllers under the Data Protection Legislation in relation to any such Personal Data which they share.
- 14.3 In relation to any Government Data held or otherwise in the control of the Supplier in connection with this Agreement, the Supplier:
- (a) must not remove any ownership or security notices in or relating to the Government Data.
  - (b) must notify the Buyer and immediately suggest remedial action if at any time it suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded.
  - (c) must, at the option of the Buyer, if the Government Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the Supplier's negligent act or omission:
    - (i) restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; or
    - (ii) provide all reasonable assistance to the Buyer to enable the Buyer to restore the Government Data itself or through a third party.
  - (d) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
  - (e) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - (f) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice; and
  - (g) 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.
- 14.4 The Supplier indemnifies the Buyer against any and all Losses incurred if the Supplier breaches this clause 14 and any Data Protection Legislation.

## **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; and
  - (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;
  - (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; and/or
  - (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. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - (b) 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;
  - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;

(d) where requested by Parliament; and/or

(e) 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 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

## **16. When you can share information**

16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

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

(a) comply with any Freedom of Information Act (FOIA) request; and

(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.

## **17. Invalid parts of the contract**

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**

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**

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;
  - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 20.2 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 90 days continuously.
- 20.3 If a Party terminates under clause 20.2:
- (a) each party must cover its own losses; and
  - (b) clause 11.4(a) to 11.4(f) applies.

## **21. Relationships created by the Contract**

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**

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 The Supplier cannot assign the Contract without the Buyer's written consent.
- 23.2 The Buyer can assign, novate or transfer the Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 23.3 When the Buyer uses its rights under clause 23.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

- 23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff 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; and
  - (c) the duration of their appointment.

## **24. Changing the contract**

- 24.1 Either Party can request a variation to the Contract 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.
- 24.2 If the Buyer changes its supplier of Goods such that the size of the Cartons being delivered by the Buyer to the Supplier alters from that set out in Annex 1 to the Contract, the Parties shall discuss and agree in good faith any changes required to the terms of the Contract as a result.

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

- 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); and/or
  - (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:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
  - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 27.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

## **28. Health and safety**

- 28.1 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable Law regarding health and safety; and
  - (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 28.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.



## **29. Environment**

- 29.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 29.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## **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 if applicable, any interest or any fines. The Buyer cannot terminate the Contract if the Supplier has not paid a minor tax or social security contribution.
- 30.2 If 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 ("**Tax Liability**"), 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; and
  - (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 Term in connection with the Tax Liability arising 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;
  - (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 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 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 33.5.
- 33.3 Unless the Buyer refers the dispute to arbitration using clause 33.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
  - (a) determine the dispute;
  - (b) grant interim remedies; and
  - (c) grant any other provisional or protective relief.
- 33.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

- 33.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 33.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 33.4.
- 33.6 The Supplier cannot suspend the performance of the Contract during any dispute.

## **34. Which law applies**

- 34.1 The Contract and any issues arising out of, or connected to it (whether of a contractual and/or non-contractual nature) are governed by English law.

## **35. Publicity and announcements**

- 35.1 The Supplier shall obtain written approval from the Buyer prior to making publicity releases or announcements (including responding to media or other enquiries) regarding the Contract and the Supplier's provision of the Services under the Contract.