

The Short Form Contract

SHORT FORM CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES

I. Cover Letter

TBC Supplier name
TBC Supplier address

Attn: **TBC Supplier contact name**
By email to: **TBC Supplier contact email address**

Date: **TBC**
Your ref: **TBC**
Our ref: PS23085

Dear TBC,

Following your tender/proposal for the supply of PS23085 Gathering Evidence To Improve Airtightness in the UK Housing Stock to Department for Energy, Security and Net Zero, we are pleased confirm our intention to award this Contract to you.

The attached Order Form, contract Conditions and the Annexes set out the terms of the Contract between Department for Energy, Security and Net Zero and **TBC** for the provision of the Deliverables 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 Deliverables. Please confirm your acceptance of this Contract by signing and returning the Order Form to Alan Bird at the following email address: Professionalservices@uksbs.co.uk within **7** days from the date of the Order Form. No other form of acknowledgement will be accepted. Please remember to include the reference number(s) above in any future communications relating to this Contract.

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

Yours faithfully,

TBC

The Short Form Contract

II. Order Form

1. Contract Reference	PS23085	
2. Buyer	Department for Energy, Security and Net Zero	
3. Supplier	TBC	
4. The Contract	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables.</p> <p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and Annexes.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p>	
5. Deliverables	Goods	None
	Services	<p>Description: as set out Annex 2 – Specification.</p> <p>To be performed at <i>the Supplier's premises</i>.</p> <p>Date(s) of Delivery: As set out in Annex 2 – Specification.</p>
6. Specification	The specification of the Deliverables is as set out in Annex 2 – Specification	
7. Start Date	17 th July 2023 or 31 st July 2023	
8. Expiry Date	31 st January 2024	
9. Extension Period	Not applicable	
10. Optional Intellectual	Not applicable	

The Short Form Contract

Property Rights ("IPR") Clauses	
11. Charges	The Charges for the Deliverables shall be as set out in Annex 3 – Charges
12. Payment	<p>Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier.</p> <p>All invoices must be sent, quoting a valid Purchase Order Number (PO Number), to: ap@uksbs.co.uk BEIS c/o UK SBS, Queensway House, West Precinct, Billingham, TS23 2NF.</p> <p>Within 10 Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You 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, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may be sent back to you, which may lead to a delay in payment.</p> <p>Payments will be made by BACS to TBC.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable team either by email to: ap@uksbs.co.uk or by telephone 01793-867004 between 09:00 and 17:00 Monday to Friday .</p>
13. Data Protection Liability Cap	In accordance with clause 12.5 of the Conditions, the Supplier's total aggregate liability under clause 14.7(e) of the Conditions is no more than the Data Protection Liability Cap, being of £500,000 .
14. Progress Meetings and Progress Reports	<ul style="list-style-type: none"> • The Supplier shall attend progress meetings with the Buyer every month • The Supplier shall provide the Buyer with progress reports every month

The Short Form Contract

15. Buyer Authorised Representative(s)	For general liaison your contact will continue to be TBC name and contact details or, in their absence, TBC name and contact details.								
16. Supplier Authorised Representative(s)	For general liaison your contact will continue to be TBC name and contact details or, in their absence, TBC name and contact details.								
17. Address notices for	<table border="0"> <tr> <td>Buyer:</td> <td>Supplier:</td> </tr> <tr> <td>Department for Energy, Security and Net Zero, 1 Victoria Street, London, SW1H 0ET</td> <td>TBC name and address of Supplier</td> </tr> <tr> <td>Attention: TBC</td> <td>Attention: TBC</td> </tr> <tr> <td>Email: TBC</td> <td>Email: TBC</td> </tr> </table>	Buyer:	Supplier:	Department for Energy, Security and Net Zero, 1 Victoria Street, London, SW1H 0ET	TBC name and address of Supplier	Attention: TBC	Attention: TBC	Email: TBC	Email: TBC
Buyer:	Supplier:								
Department for Energy, Security and Net Zero, 1 Victoria Street, London, SW1H 0ET	TBC name and address of Supplier								
Attention: TBC	Attention: TBC								
Email: TBC	Email: TBC								
18. Key Staff	<table border="0"> <tr> <td>Key Staff Role:</td> <td>Key Name:</td> <td>Staff Contact Details:</td> </tr> <tr> <td>TBC</td> <td></td> <td></td> </tr> </table>	Key Staff Role:	Key Name:	Staff Contact Details:	TBC				
Key Staff Role:	Key Name:	Staff Contact Details:							
TBC									
19. Procedures and Policies	For the purposes of the Contract the: The Buyer's security / data security requirements are. https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework								
20. Special Terms	N/A								

The Short Form Contract

21. Incorporated /terms	<p>The following documents are incorporated into the Contract. If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none">a) The cover letter from the Buyer to the Supplier dated TBC (if used)b) This Order Formc) Any Special Terms (see row 20 (Special Terms) in this Order Form)d) The following Annexes in equal order of precedence:<ul style="list-style-type: none">i. Annex 1 – Processing Personal Dataii. Annex 2 – Specificationiii. Annex 3 – Chargese) Annex 4 – Supplier Tender
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The Short Form Contract

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer
Name: TBC TBC job title	Name: TBC TBC job title
Date:	Date:
Signature:	Signature:

The Short Form Contract

III. Annex 1 – Processing Personal Data**A. Part A - Authorised Processing Template**

Contract:	PS23085 Gathering Evidence To Improve Airtightness in the UK Housing Stock
Date:	TBC
Description of authorised processing	Details
Identity of Controller and Processor for each category of Personal Data	N/A
Subject matter of the processing	N/A
Duration of the processing	N/A
Nature and purposes of the processing	N/A
Type of Personal Data	N/a
Categories of Data Subject	N/A
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	N/A
Locations at which the Supplier and/or its Subcontractors process Personal Data under this Contract	N/A
Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect Personal Data processed under this Contract against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	N/A

B.

Subject to Contract

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IV. Annex 2 – Specification**1 Introduction**

The Heat and Buildings Strategy states that “...the journey to Net Zero buildings starts with better energy performance.” Heat loss due to poor airtightness of buildings is understood to be a problem in some homes, however we don’t know how serious the problem is or in how many homes. Research is therefore needed to better understand the baseline airtightness of the UK housing stock to inform future retrofit policies that aim to tackle heat loss, overheating and energy performance by improving airtightness. This work will ultimately look to quantify the emissions saving potential by first understanding the airtightness of the existing stock and then targeting retrofit policies appropriately.

This research will support policy work by addressing three clear knowledge gaps:

- Gather quantitative as-built evidence of the airtightness of the UK housing stock to understand the baseline and to improve targeting of retrofit and overheating policies.
- Gather evidence to support an update to the “n/20” rule of thumb that is used in the Standard Assessment Procedure (SAP) to link airtightness to infiltration, the model that assesses compliance with building regulations.
- Gather qualitative in-use evidence of construction and operational practices relating to airtightness such that better energy efficiency of buildings can be targeted through airtightness measures, both in new construction, retrofit of the existing stock and subsequent operation of any dwelling.

This research will be conducted in two phases – Phase 1 (this procurement) will carry out a literature review, and identification and analysis of existing data on the airtightness of the existing stock. Phase 1 will also provide a list of recommendations on which field surveys to be completed in Phase 2 (to be procured later) will be based.

Current typical advice on draught proofing focuses on straightforward measures such as sealing gaps around windows and doors. The ongoing DESNZ project, Demonstration of Energy Efficiency Potential (DEEP), provides detailed insight from a small sample of case studies on the impacts of increased airtightness as a retrofit measure. This project will specifically address evidence gaps between these extremes with the aim of supporting the development of improved airtightness policy for the whole existing building stock.

2 Aims & Objectives

The aims of the project are to:

- gather evidence of the baseline airtightness of the UK housing stock so as to be able to better target retrofit policy;
- gather evidence to support an update to the “n/20” rule of thumb used in the SAP calculation that links airtightness to infiltration and is known to be unreliable; and

The Short Form Contract

- to understand better the construction and operational practices and risks that relate to airtightness.

The Objectives for Phase 1 are:

- 1) Review what the current literature says about the airtightness, infiltration and ventilation of the existing UK housing stock and identify the gaps in the evidence base.
- 2) Identify what studies have been done to date and what data are currently available regarding the airtightness of the UK housing stock, broken down by building characteristics such as type/age/construction type/listed status etc.
- 3) Define what the n/20 rule used in SAP is, how it is currently used, what are its limitations and suggest proposals for a methodology to change/improve it.
- 4) Understand what is known about construction practices and risks relating to airtightness in the UK housing stock and whether there are typical failure points during the construction process which lead to poor airtightness or increase the risk of overheating.
- 5) Provide recommendations and suggest aims, objectives and methodology for Phase 2 to inform survey design which will:
 - a. achieve a reliable overview of the baseline airtightness of the UK housing stock taking into consideration the Devolved Administrations.
 - b. update the SAP methodology for estimating infiltration rates;
 - c. understand construction and operational practices relating to airtightness and ventilation in UK homes.

The recommendations are expected to include the type of tests that should be carried out, the number of houses that should be tested, typical costs of tests and time to carry out tests, likely team/resources required, approach to interviews etc.

3 Background to the requirements

Airtightness is important for minimising heat loss through uncontrolled air exchanges between the inside and outside of a building and good airtightness plays a crucial role in achieving low energy houses. Infiltration should not be relied upon as a means of ventilating a building. Adequate ventilation must be provided to an airtight space to mitigate overheating and prevent moisture build up which could otherwise lead to damp and mould problems.

The project will address three clear knowledge gaps as follows:

- 1) **Understand the baseline airtightness of the UK housing stock to inform retrofit policies.**

There is very little research on the actual airtightness of existing homes in the UK stock. Whilst all new homes have an airtightness test at completion, this is not reflective of general infiltration in the older stock. We know that unintended heat loss due to poor airtightness is a huge problem in some homes, however we don't know how many. Having this knowledge gap limits our ability to make useful

The Short Form Contract

energy efficiency improvements at a national scale – given that infiltration can be such a dominant factor in the heat loss of a building, being unsure about the airtightness of the stock can lead to uncertainty around the effectiveness of other energy efficiency measures or the accuracy of modelling. Evidence arising from the ongoing DEEP case studies also suggests that the underlying airtightness impacts the benefit from non-airtightness retrofits, like underfloor insulation. It is therefore important to understand the airtightness of the existing stock to be able to target airtightness retrofit policies appropriately and proportionately. Identifying generic building archetypes or building components will also enable targeted interventions.

The literature review and data analysis carried out in this phase of the work will be used to inform and scope out a large-scale national survey of a stratified sample of homes that will take place in a future Phase 2. The survey will aim to understand the state of airtightness in the stock and the potential for airtightness improvements. We also wish to understand how the airtightness of UK homes compares to those of other European countries.

2) Gather evidence to support an update to the methodology used for estimating the infiltration rates in SAP

The 'divide-by-20' rule of thumb is currently used in the SAP 10 calculation as a simple infiltration-air leakage ratio to estimate the infiltration rate from the air permeability result of a pressurisation test. It is known that this ratio is likely to be unreliable for some homes (underestimating the air change rate in some and overestimating in others) and it was identified in Recommendation 19 of Etude's SAP 11 Scoping Study completed for BEIS in 2021 that the assumptions on infiltration and ventilation (including the n/20 rule) should be reviewed and revalidated or revised in future improved versions of SAP. An inaccurate estimate of the infiltration rate used in the SAP calculation will contribute to an inaccurate estimate of the heat loss from a home which in turn contributes to the performance gap (the difference between designed and as-built energy performance of a building). SAP 11 is looking to address the issue with the n/20 rule of thumb to some degree by looking at potential options such as the CIBSE Guide A methodology, but this airtightness project is intended to go further.

Measurement of the infiltration of every home requiring a SAP calculation directly with a gas tracer test is impractical as it is expensive and time consuming. An update to the n/20 rule to estimate the infiltration from the air permeability result (from a more affordable and practical pressurisation test) that goes further than the options considered in SAP 11 is therefore required. This Phase of the project will propose what tests need to be carried out, the conditions under which those tests should take place (e.g. weather) and define how many homes should be surveyed in order to represent the entire stock and gather enough data to reliably update the calculation. Phase 2 will gather and process this data.

The Short Form Contract

Incorporating airtightness accurately into SAP will be of crucial benefit to policy given that policy schemes are currently based on EPCs/SAP. Understanding the baseline airtightness in the stock and being able to accurately model it in SAP will help target policies effectively as airtightness changes resulting from intervention/retrofit can be accurately quantified.

3) **Construction and operational practices relating to airtightness – understanding how these affect energy efficiency and what they mean for overheating.**

The Future Homes Standard (FHS) proposes an air permeability target of 5 m³/hr.m² for new builds. Going beyond such levels of airtightness would require a fundamental shift in both construction and operational practices, as well as a greater understanding and awareness of the risks.

Construction - In practice, there is currently no sole responsibility or ownership of airtightness by a single trade during the construction process and it is known that airtightness test results can be manipulated and therefore be misleading (e.g., windows edges can be taped over to improve a test result). Phase 1 literature review will look to understand what is known about construction practices relating to airtightness in the UK housing stock and whether there are typical failure points during the construction process which lead to poor airtightness. Suggestions should be made for investigating further in site surveys or interviews in Phase 2.

Research into whether airtightness could be used as a proxy for 'build quality' could help inform policies aiming to increase the quality of construction. It is anticipated that defining 'build quality' and identifying any relationship to measured data/airtightness test results will be an objective of Phase 2, however the literature review of this phase should bear this objective in mind.

Operation - it is unknown whether people are aware of how to ventilate their properties sufficiently and appropriately or operate and maintain mechanical ventilation systems, and if they do have this knowledge, whether they act upon it. It is also unclear how airtightness measures perform over time or whether there is deterioration, especially in new build properties. In addition, a review of mechanical ventilation systems that have already been installed and identifying where there are problems or lessons learned from commissioning could help ensure optimal use of these systems in homes. It is anticipated that this will primarily be investigated as part of interviews and site surveys in Phase 2, however the literature review in this phase should bear this objective in mind and present findings/recommendations that will help scope Phase 2.

Overheating – Inadequate ventilation alongside (poorly fitted?) energy efficiency measures can lead to condensation, mould and other unintended consequences. It can also exacerbate the risks associated with a warming climate, including poor indoor air quality and overheating. Currently, measures installed under current Government schemes must be carried out by a Trustmark registered and Publicly

The Short Form Contract

Available Standards (PAS) 2030 certified installer in accordance with PAS 2035 to ensure the risks of poor-quality installations are minimised.

The risk of overheating and poor indoor air quality will be increasingly important in a warming climate, however, evidence gaps are common in this area. Research is needed to: address evidence gaps in the overheating space; understand how airtightness and ventilation retrofit policies will perform in the future with a warming climate; and to inform new and existing retrofit policies to ensure that the existing housing stock is appropriately retrofitted to adapt to a warming climate whilst delivering Net Zero by 2050. There is a need to understand the thermal performance of a building in respect of its ability to retain heat in the winter or maintain comfortable conditions in the summer. Infiltration should not be relied upon as a means of ventilating a building, but if it is and infiltration is to be addressed, the consequences of doing so need to be understood.

An understanding of the baseline airtightness of the stock, as well as an understanding of the year-round ventilation properties of buildings will help lay the ground for future research to address these social/behavioural research issues and identify the pros/cons/barriers of going further than the target set in the FHS. If better airtightness were to be targeted, sufficient ventilation must be provided to avoid moisture build up which could lead to mould issues, and appropriate advice must be given to occupants to help them manage the risks.

Links to other areas

The findings from this work will be useful to the Hydrogen Heating policy team who are looking to understand the airtightness of the UK housing stock and how this depends upon the building/construction type and specific ventilation features installed in homes. The Hydrogen team will combine findings from this work with wider evidence being gathered by the Hydrogen Heating programme on the relationship between airtightness and the accumulation characteristics of hydrogen gas in the event of a leak in homes with different ventilation features.

4 Requirements**Research Questions**

The contractor is expected to use the following research questions as a guide to help meet the above objectives and to address the evidence gaps listed in the background section:

- What is the n/20 rule and how is it used?
- What are the limitations with the n/20 rule?
- How should the SAP methodology for estimating infiltration rates should be changed/improved?
- What data needs to be collected to support/validate a change/improvement to the way SAP calculates airtightness? E.g. types of tests, numbers of houses that need to

The Short Form Contract

be tested, building survey data, costs of tests, time taken to conduct tests, conditions under which tests should be taken etc.

- What is the typical airtightness of different house types in the UK?
- How does the airtightness of UK houses compare to that of houses from other European countries?
- How does airtightness differ by house type/age/construction type/listed status etc?
- What are the typical airtightness failure points by house type/age/construction type etc?
- How could typical failures in airtightness be addressed by retrofit?
- What is the potential impact (£ and Carbon savings) of improving airtightness across the UK housing stock? Consider different airtightness retrofit measures.
- Is there a relationship between airtightness and build quality?
- What are the typical points of failure in the construction process that can lead to poor airtightness?
- How do people typically ventilate their buildings?
- Do people ventilate their buildings sufficiently or appropriately? Do they know how to?
- What construction and operational practices in relation to airtightness and ventilation need to be considered in the scenario of a warming climate if overheating is to be mitigated?
- What might a field study look like in terms of aims/ objectives, method, costs and impact to gather the necessary data?

Methodology**Literature review to address research questions:**

- Review existing literature to establish what is currently known about airtightness, infiltration and ventilation of the existing UK housing stock, both as a whole at a national level and in specific case studies – it is believed that many existing airtightness studies are limited to small samples of specific building types. By reviewing existing literature, this work will seek to understand airtightness on a larger scale in different building types. The successful bidder will be supplied with existing/unpublished reports from ongoing government research on airtightness to avoid duplication of effort and to build on existing knowledge – this literature review is expected to not replicate previous BEIS funded work, but go further.
- Review literature and data on airtightness in the UK, other European countries, and countries with a similar climate to the UK to draw comparisons.
- Review literature to identify practices and principles relating to airtightness that contribute to the performance gap, both relating to construction and occupation.
- Review literature to understand how “build quality” is characterised across literature, with focus on whether airtightness is related to build quality.

Data analysis to supplement literature review in answering research questions:

- Identify what existing data sources are available on the airtightness of the UK housing stock to understand if information can be gathered without the use of, or prior to, field trials taking place. Given the requirement for all new builds to have an airtightness test, bidders will be expected to provide details of how they intend to

The Short Form Contract

identify data sources that are representative of the whole stock, not just skewed towards new build.

- Arrange access where possible to existing qualitative and quantitative data sources. Carry out analysis to obtain information without the need for a field trial. We expect bidders to be able to obtain insights into construction and operational practices applicable to the whole stock, even if the requirement for airtightness tests is biased towards newer houses.
- Explore existing data to understand if independent repeat airtightness tests can be conducted to inform our understanding of degradation over time and to understand and quantify the prevalence of gapping.

Survey scoping:

- Comment on how far Phase 1 is able to go in achieving the objectives and answering the research questions, and make suggestions on where further work will need to be done in Phase 2 alongside the field trials to meet the objectives.
- Suggest a nationally representative sample of domestic building archetypes that should be surveyed to meet the objectives and answer the research questions including, but not limited to: attachment type (detached, semi-detached, terrace and flats), construction type (solid or cavity walls etc.), different ages and geographic regions, window type (e.g. sash windows), etc. This information will be used to define the size and cost of the full building survey that will take place in Phase 2.
- Suggest the types of tests and how many would need to be carried out to fulfil the research objectives.
- Suggest typical costs for these tests, how long they take to carry out and the resources required to complete the proposed field tests.

Inputs

It is intended that this research builds on previous government research that considers airtightness, including the DEEP project and SAP 11 project. We will provide the successful bidder with documentation from the ongoing SAP 11 project and unpublished research from the DEEP study.

In relation to airtightness, the DEEP project specification required the following of that project:

“Objective 8: To characterise the technical and practical barriers to solid wall building retrofit.

BEIS requires information on the airtightness of solid wall dwellings to understand energy consumption and the likelihood of retrofit not achieving its predicted performance...

A sample of solid wall dwellings should be tested to quantify airtightness and characterise air movement behaviour, including determining unintentional air leakage pathways. The size of this sample should be sufficient to provide confidence in measurements, and such measurements should enable the characterisation of the various air movement phenomena that are observed, and their relationship with the building fabric.”

The Short Form Contract

A review of natural ventilation in dwellings in relation to airtightness calculations in SAP has been conducted in the SAP 11 project.

Outputs

DESNZ will receive the following reports:

- Literature Review detailing what current literature says about airtightness, infiltration and ventilation of the UK housing stock, including details of relevant studies and research.
- Synthesis report identifying existing sources of data about airtightness in the UK housing stock and presenting the results of analysis of those sources.
- Report commenting on how well Phase 1 is able to achieve the objectives and answer the research questions, and recommend where further work could be done in Phase 2 alongside the field trials.
- List of Recommendations to help prepare for the Phase 2 field study and interviews such that an understanding of the baseline airtightness of the UK housing stock will be obtained and an understanding of how construction and operational practices and risks relate to airtightness. This may be provided in the form of a series of options for how Phase 2 may be carried out. This should include details on how to obtain a nationally representative stratified sample of homes so that the SAP methodology for estimating infiltration rates can be reliably updated. Recommendations will likely include, but are not limited to:
 - Sample size and sampling methodology
 - List of archetypes
 - Tests to be conducted e.g., Blower Door, Pulse, Gas Tracer tests, thermal imaging etc. and conditions under which tests should be carried out
 - Building survey data to be collected
 - Estimates of typical costs, time and resources

The appointed contractor will be responsible for the day-to-day management of the project and hence responsible for achieving the project objectives.

Regular progress meetings will be held at least bi-weekly between the contractor and the DESNZ Project Manager, with weekly email correspondence as a minimum. These meetings will be a chance to discuss progress against objectives, identify potential risks/opportunities and put in place actions such that risks are mitigated in a timely manner and avoid becoming issues. The contractor will be required to maintain a risk register and Risks, Assumptions, Issues and Dependencies (RAID) log which will be shared with the DESNZ PM and risks / issues will be escalated to the SRO as appropriate.

As this work will be completed in two phases, all IP arising from Phase 1 must be made available to DESNZ to share with bidders and contractor appointed for future phases of the work – see Clause 10 of the Short Form contract.

The contractor will be required to nominate a named individual to act as the main point of contact for the project. The contractor will be asked to provide details of their project and organisational structure such that any issues with performance can be escalated appropriately by the Department to the appropriate level on the Contractor side.

The Short Form Contract

5 Timescales

The bidder will be required to submit appropriate work packages and gantt chart for completing the work.

We will ask for a preliminary findings report approximately half way through the project – we expect this to be sufficiently well progressed to enable early stage scoping and budgeting for Phase 2.

The project is expected to last 6 months with indicative timeline as follows:

Contract signed/kick-off meeting – July 2023

Preliminary findings/recommendations – September 2023

Draft Final report – November 2023

Final report – January 2024

Payment Milestones may be aligned with key dates and/or deliverables.

Terms and Conditions

Bidders are to note that any requested modifications to the Contracting Authority Terms and Conditions on the grounds of statutory and legal matters only, shall be raised as a formal clarification during the permitted clarification period.

V. Annex 3 – Charges

TBC

VI. Annex 4 – Supplier Tender

TBC

The Short Form Contract

VII. Short form Terms (“Conditions”)**1. Definitions used in the Contract**

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

“Affiliates”	in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and “Controlled” shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
“Audit”	<p>the Buyer’s right to:</p> <ul style="list-style-type: none"> (a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract); (b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables; (c) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law; (d) identify or investigate actual or suspected breach of clauses 4 to 35, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations; (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables; (f) obtain such information as is necessary to fulfil the Buyer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract; (h) carry out the Buyer’s internal and statutory audits and to prepare, examine and/or certify the Buyer’s annual and interim reports and accounts;

The Short Form Contract

	(i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
"Buyer"	the person named as Buyer in the Order Form. Where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
"Buyer Cause"	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;
"Central Government Body"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (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;
"Charges"	the charges for the Deliverables as specified in the Order Form;
"Claim"	any claim which it appears that the Buyer is, or may become, entitled to indemnification under this Contract;
"Compliance Officer"	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
"Conditions"	means these short form terms and conditions of contract;
"Confidential Information"	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;
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the

The Short Form Contract

	Buyer;
"Contract"	the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the cover letter (if used), Order Form, these Conditions and the Annexes;
"Controller"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	(a) the UK GDPR, (b) the DPA 2018; (c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and (d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);
"Data Protection Liability Cap"	has the meaning given to it in row 13 of the Order Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Date of Delivery"	that date by which the Deliverables must be Delivered to the Buyer, as specified in the Order Form;
"Deliver"	hand over of the Deliverables to the Buyer at the address

The Short Form Contract

	and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed in accordance with clause 4.2. "Delivered" and "Delivery" shall be construed accordingly;
"Deliverables"	means the Goods and/or Services to be supplied under the Contract as set out in the Order Form;
"DPA 2018"	the Data Protection Act 2018;
"EU"	the European Union;
"EU GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
"Existing IPR"	any and all 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);
"Expiry Date"	the date for expiry of the Contract as set out in the Order Form;
"FOIA"	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;
"Force Majeure Event"	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the "Affected Party") which prevent or materially delay the Affected Party from performing its obligations under the Contract; (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; (c) acts of a Crown Body, local government or regulatory bodies; (d) fire, flood or any disaster; or (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available <p>but excluding:</p>

The Short Form Contract

	<p>(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;</p> <p>(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; and</p> <p>(iii) any failure of delay caused by a lack of funds,</p> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
"Goods"	the goods to be supplied by the Supplier to the Buyer under the Contract;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government Data"	(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;
"Independent Controller"	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	in respect of a person:

The Short Form Contract

	<ul style="list-style-type: none"> (a) if that person is insolvent; (b) where that person is a company, LLP or a partnership, 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 person's assets or business; (d) if the person makes any composition with its creditors; or (e) 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;
"IP Completion Day"	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Error! Reference source not found. of Annex 1 – <i>Processing Personal Data</i> ;
"Joint Controllers"	Where two or more Controllers jointly determine the purposes and means of processing;
"Key Staff"	any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier;
"Law"	any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Month"	a calendar month and " Monthly " shall be interpreted accordingly;
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
"New IPR"	all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the

The Short Form Contract

	Contract but shall not include the Supplier's Existing IPR;
"New IPR Items"	means a deliverable, document, product or other item within which New IPR subsists;
"Open Licence"	means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ and the Open Standards Principles documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles ;
"Order Form"	the order form signed by the Buyer and the Supplier printed above these Conditions;
"Party"	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Personal Data Breach"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies as updated from time to time;
"Processor"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor Personnel"	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
"Protective Measures"	technical and organisational measures which must take account of: <ul style="list-style-type: none"> (a) the nature of the data to be protected; (b) harm that might result from Data Loss Event;

The Short Form Contract

	<p>(c) state of technological development;</p> <p>(d) the cost of implementing any measures;</p> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
"Purchase Order Number" or "PO Number"	the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the Contract;
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its material default which shall include:</p> <p>(a) full details of the material default that has occurred, including a root cause analysis;</p> <p>(b) the actual or anticipated effect of the material default; and</p> <p>(c) the steps which the Supplier proposes to take to rectify the material default (if applicable) and to prevent such material default from recurring, including timescales for such steps and for the rectification of the material default (where applicable);</p>
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
"Request For Information"	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);
"Services"	the services to be supplied by the Supplier to the Buyer under the Contract;
"Specification"	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;
"Staff Vetting Procedures"	vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer's procedures or policies for the vetting of personnel as specified in the Order Form or provided to the Supplier in writing following agreement to the same by the Supplier from time to time;

The Short Form Contract

"Start Date"	the start date of the Contract set out in the Order Form;
"Sub-Contract"	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"> (a) provides the Deliverables (or any part of them); (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
"Supplier"	the person named as Supplier in the Order Form;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Transparency Information"	<p>In relation to Contracts with a value above the relevant threshold set out in Part 2 of the Regulations only, the content of the Contract, including any changes to this Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract required to be published by the Buyer to comply with its transparency obligations, including those set out in Public Procurement Policy Note 09/21 (update to legal and policy requirements to publish procurement information on Contracts Finder) (https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder) and Public Procurement Policy Note 01/17 (update to transparency principles) where applicable (https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles) except for:</p> <ul style="list-style-type: none"> (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (b) Confidential Information;

The Short Form Contract

"Term"	the period from the Start Date to the Expiry Date as such period may be extended in accordance with clause 11.2 or terminated in accordance with the Contract;
"Third Party IPR"	intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"UK GDPR"	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and
"Working Day"	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 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;
- 2.7 the word "including", "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";
- 2.8 any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time):

The Short Form Contract

- (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 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- (b) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

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 its tender (if any) and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

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

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification, the tender in Annex 4 – Supplier Tender (where applicable) and the Contract; (ii) using reasonable skill and care; (iii) using Good Industry Practice; (iv) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (v) on the dates agreed; and (vi) that comply with all Law.
- (b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

4.2 Goods clauses

- (a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of Delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
- (d) Risk in the Goods transfers to the Buyer on Delivery, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

The Short Form Contract

- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must Deliver the Goods on the date and to the location specified in the Order Form, during the Buyer's working hours (unless otherwise specified in the Order Form).
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- (i) The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- (k) The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable endeavours to minimise these costs.
- (l) The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- (m) 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 suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify 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 Subcontractors or Supplier Staff.

4.3 Services clauses

- (a) Late Delivery of the Services will be a default of the Contract.
- (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 the security requirements (where any such requirements have been provided).
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services

The Short Form Contract

- (d) 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.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (i) 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 must invoice the Buyer for the charges in the Order Form.
- 5.2 All Charges:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
 - (b) include all costs and expenses 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 invoice or 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 a detailed breakdown of Deliverables which have been delivered.
- 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. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 37.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer 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 doesn't happen, the Buyer can publish the details of the late payment or non-payment.

The Short Form Contract

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; 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 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 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to its premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the Audit.
- 7.4 During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a material default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 7.6 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.
- 7.7 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

The Short Form Contract

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).

7.8 If there is a material default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the material default. The Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires. Once such Rectification Plan is agreed between the Parties (without the Buyer limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.

8. Supplier Staff

8.1 The Supplier Staff involved in the performance of the Contract must:

- (a) be appropriately trained and qualified;
- (b) be vetted in accordance with the Staff Vetting Procedures; and
- (c) comply with all conduct requirements when on the Buyer's premises.

8.2 Where the Buyer decides one of the Supplier's Staff isn't 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 29.1 to 29.3 .

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 or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

8.6 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:

- (a) requested to do so by the Buyer or the Buyer approves such removal or replacement (not to be unreasonably withheld or delayed);
- (b) the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
- (c) the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.

The Short Form Contract

- 8.7 The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

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) all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and the Buyer to receive the Deliverables;
 - (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 3.3 and 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 made in relation to the Contract 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.
- 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 the Buyer and its sub-licensees to both:
- (a) receive and use the Deliverables; and
 - (b) use the New IPR.

The Short Form Contract

- 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 and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Term or using or exploiting the New IPR developed under the Contract.
- 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; and
 - (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.
- 10.7 The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless it has notified the Buyer that the owner or an authorised licensor of the relevant Third Party IPR will grant a direct licence to the Buyer for the Third Party IPR and that licence has been granted. The Buyer, in its absolute discretion, shall have 10 Working Days following the Supplier's notification to reject the grant of the licence. If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party IPR, for whatever reason, the Supplier shall:
- (a) notify the Buyer in writing; and
 - (b) use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific intellectual property rights involved.
- 10.8 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.
- 11. Ending the contract**
- 11.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract, or earlier if required by Law.

The Short Form Contract

11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

11.3 **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 90 days' written notice, and if it's terminated clause 11.5(a)(ii) to 11.5(a)(viii) applies.

11.4 **When the Buyer can end the Contract**

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
- (i) there's 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) 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'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) 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) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
 - (vii) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.
- (b) The Buyer also has the right to terminate the Contract in accordance with clauses 7.7(b), 21.3, 29.4(b), 34.3 and Paragraph **Error! Reference source not found.** of **Error! Reference source not found.** of Annex 1 – *Processing Personal Data* (if used).
- (c) If any of the events in 73(1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(a)(ii) to 11.5(a)(viii) applies.

11.5 **What happens if the Contract ends (Buyer termination)**

- (a) Where the Buyer terminates the Contract under clause 11.4(a), 7.7(b), 29.4(b), or Paragraph **Error! Reference source not found.** of **Error! Reference source not found.** of Annex 1 – *Processing Personal Data* (if used), all of the following apply:

The Short Form Contract

- (i) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;
- (ii) the Buyer's payment obligations under the terminated Contract stop immediately;
- (iii) accumulated rights of the Parties are not affected;
- (iv) the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;
- (v) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (vi) 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;
- (vii) the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry; and
- (viii) the following clauses survive the termination of the Contract: 4.2(j), 7, 8.5, 10, 12, 14, 15, 16, 19, 20, 37 and 38 and any clauses which are expressly or by implication intended to continue.

11.6 When the Supplier can end the Contract and what happens when the contract ends (Buyer and Supplier termination)

- (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 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) Where the Buyer terminates the Contract in accordance with clause 11.3 or the Supplier terminates the Contract under clause 11.6(a) or 24.4:
 - (i) the Buyer must promptly pay all outstanding charges incurred by 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 11.5(a)(ii) to 11.5(a)(viii) apply.
- (c) The Supplier also has the right to terminate the Contract in accordance with Clauses 21.3 and 24.4.

11.7 Partially ending and suspending the Contract

The Short Form 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 26) any necessary variation required by clause 11.7, but the Supplier may not either:
 - (i) reject the variation; or
 - (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 11.7.

12. How much you can be held responsible for

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
 - (a) any indirect losses; and/or
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of 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; or
 - (c) any liability that cannot be excluded or limited by Law.
- 12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 8.5, 9.3(b), 10.5, or 33.2(b).
- 12.5 Notwithstanding clause 12.1, but subject to clauses 12.1 and 12.3, the Supplier's total aggregate liability under clause 14.7(e) shall not exceed the Data Protection Liability Cap.
- 12.6 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.
- 12.7 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.

13. Obeying the Law

- 13.1 The Supplier must, in connection with provision of the Deliverables:

The Short Form Contract

- (a) comply and procure that its Subcontractors comply with the Supplier Code of Conduct:
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form;
 - (b) comply with the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989;
 - (c) support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;
 - (d) comply with the model contract terms contained in Example 1 of Annex C of the guidance to PPN 05/19 (Tackling Modern Slavery in Government Supply Chains) shall apply to the Contract, as such clauses may be amended or updated from time to time; and
 - (e) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.
- 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 28 to 35.
- 14. Data Protection**
- 14.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.2 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 14.3 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Buyer (where any such requirements have been provided).
- 14.4 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 14.5 If 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 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
 - (b) restore the Government Data itself or using a third party.

The Short Form Contract

- 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 The Supplier:
- (a) must provide the Buyer with all Government Data in an agreed open format within 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; and
 - (e) indemnifies the Buyer against any and all losses incurred if the Supplier breaches clause 14 or any Data Protection Legislation.
- 14.8 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the DPA 2018. A Party may act as:
- (a) "Controller" in respect of the other Party who is "Processor";
 - (b) "Processor" in respect of the other Party who is "Controller";
 - (c) "Joint Controller" with the other Party;
 - (d) "Independent Controller" of the Personal Data where the other Party is also "Controller",
- in respect of certain Personal Data under the Contract and shall specify in Part A - *Authorised Processing Template* of Annex 1 – *Processing Personal Data* which scenario they think shall apply in each situation.
- 14.9 **Where one Party is Controller and the other Party its Processor**
- (a) Where a Party is a Processor, it must only process Personal Data if authorised to do so in Part A - *Authorised Processing Template* of Annex 1 – *Processing Personal Data* by the Controller. Any further written instructions relating to the processing of Personal Data are incorporated into Part A - *Authorised Processing Template* of Annex 1 – *Processing Personal Data*.
 - (b) The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, including:
 - (i) a systematic description of the expected processing and its purpose;
 - (ii) the necessity and proportionality of the processing operations;
 - (iii) the risks to the rights and freedoms of Data Subjects; and
 - (iv) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.

The Short Form Contract

- (c) The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.
- (d) The Processor must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.
- (e) If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.
- (f) The Processor must use all reasonable endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this clause 14;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (iii) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (g) Where the Personal Data is subject to UK GDPR, the Processor must not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or
 - (ii) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "**IDTA**"), or International Data Transfer Agreement Addendum to the European Commission's SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time as well as any additional measures determined by the Controller;
 - (iii) the Data Subject has enforceable rights and effective legal remedies when transferred;
 - (iv) the Processor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (v) the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.

The Short Form Contract

- (h) Where the Personal Data is subject to EU GDPR, the Processor must not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the EU GDPR; or
 - (i) the Controller or Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.
 - (j) The Processor must notify the Controller immediately if it:
 - (i) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (ii) receives a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (v) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and
 - (vi) becomes aware of a Data Loss Event.
 - (k) Any requirement to notify under clause (j) includes the provision of further information to the Controller in stages as details become available.
 - (i) The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause (j). This includes giving the Controller:
 - (ii) full details and copies of the complaint, communication or request;

The Short Form Contract

- (iii) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
 - (iv) any Personal Data it holds in relation to a Data Subject on request;
 - (v) assistance that it requests following any Data Loss Event; and
 - (vi) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.
- (l) The Processor must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:
 - (i) is not occasional;
 - (ii) includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (iii) is likely to result in a risk to the rights and freedoms of Data Subjects.
- (m) The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- (n) Before allowing any Subprocessor to process any Personal Data, the Processor must:
 - (i) notify the Controller in writing of the intended Subprocessor and processing;
 - (ii) obtain the written consent of the Controller;
 - (iii) enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor; and
 - (iv) provide the Controller with any information about the Subprocessor that the Controller reasonably requires.
- (o) The Processor remains fully liable for all acts or omissions of any Subprocessor.
- (p) At any time the Buyer can, with 30 Working Days' notice to the Supplier, change this clause 14 to replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- (q) The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office or any other regulatory authority.

14.10 Joint Controllers of Personal Data

In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply

The Short Form Contract

with UK GDPR Article 26 based on the terms set out in **Error! Reference source not found.** of Annex 1 – *Processing Personal Data*.

14.11 Independent Controllers of Personal Data

In the event that the Parties are Independent Controllers in respect of Personal Data under the Contract, the terms set out in **Error! Reference source not found.** of Annex 1 – *Processing Personal Data* shall apply to this Contract.

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, a regulatory body or 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) on a confidential basis, 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
- (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 shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.**15.4 The Buyer may disclose Confidential Information in any of the following cases:**

The Short Form Contract

- (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
 - (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 Transparency Information, and 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 endeavours 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 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- (a) comply with any FOIA request;
 - (b) comply with any Environmental Information Regulations (“EIR”) request;
 - (c) if the Contract has a value over the relevant threshold in Part 2 of the Regulations, comply with any of its obligations in relation to publishing Transparency Information.
- 16.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request For Information and 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 in its absolute discretion.
- 17. Insurance**
- The Supplier shall ensure it has adequate insurance cover for this Contract.
- 18. 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 the Contract as

The Short Form Contract

much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

19. No other terms apply

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

20. Other people's rights in the 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.

21. Circumstances beyond your control

21.1 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; and
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

21.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

21.3 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 90 days continuously.

21.4 Where a Party terminates under clause 21.3:

- (a) each Party must cover its own losses; and
- (b) clause 11.5(a)(ii) to 11.5(a)(viii) applies.

22. 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.

23. 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.

24. Transferring responsibilities

24.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.

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

The Short Form Contract

- 24.3 When the Buyer uses its rights under clause 24.2 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 24.4 The Supplier can terminate the Contract novated under clause 24.2 to a private sector body that is experiencing an Insolvency Event.
- 24.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

25. Supply Chain

- 25.1 The Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- (a) the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - (b) the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - (c) the proposed Subcontractor employs unfit persons.
- 25.2 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of all such 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.
- 25.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.
- 25.4 The Supplier will ensure that all Sub-Contracts in the Supplier's supply chain entered into after the Start Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:
- (a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
 - (b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
 - (c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

The Short Form Contract

- 25.5 The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier's supply chain entered into before the Start Date but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:
- (a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
 - (b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
 - (c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.
- 25.6 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- (a) there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Subcontractor which isn't pre-approved by the Buyer in writing;
 - (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 11.4;
 - (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
 - (d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
 - (e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Regulations.
- 25.7 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

26. Changing the contract

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.

27. How to communicate about the contract

- 27.1 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 at 9am on the first Working Day after sending unless an error message is received.
- 27.2 Notices to the Buyer or Supplier must be sent to their address or email address in the Order Form.
- 27.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

The Short Form Contract

28. Dealing with claims

28.1 If the Buyer becomes aware of any Claim, the Buyer must:

- (a) notify the Supplier as soon as reasonably practical becoming aware of a Claim;
- (b) at the Supplier's cost, allow the Supplier to conduct all negotiations and proceedings to do with a Claim;
- (c) at the Supplier's cost, give the Supplier reasonable assistance with the Claim if requested; and
- (d) not make admissions about the Claim without the prior written consent of the Supplier which cannot be unreasonably withheld or delayed.

28.2 The Supplier must:

- (a) consider and defend the Claim diligently and in a way that does not damage the Buyer's reputation; and
- (b) not settle or compromise any Claim without the Buyer's prior written consent which it must not unreasonably withhold or delay.

29. Preventing fraud, bribery and corruption

29.1 The Supplier shall not:

- (a) commit any criminal offence referred to in 57(1) and 57(2) of the Regulations; 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.

29.2 The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 29.1 and any fraud by the Supplier 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.

29.3 If the Supplier notifies the Buyer as required by clause 29.2, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

29.4 If the Supplier or the Supplier Staff engages in conduct prohibited by clause 29.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:

- (a) require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the default; and
- (b) immediately terminate the Contract.

The Short Form Contract

30. Equality, diversity and human rights

- 30.1 The Supplier must follow all applicable employment and 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.
- 30.2 The Supplier must use all reasonable endeavours, 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.

31. Health and safety

- 31.1 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.
- 31.2 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.

32. Environment and sustainability

- 32.1 In performing its obligations under the Contract, the Supplier shall, to the reasonable satisfaction of the Buyer:
- (a) meet, in all material respects, the requirements of all applicable Laws regarding the environment; and
 - (b) comply with its obligations under the Buyer's current environmental policy, which the Buyer must provide.
- 32.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's environmental policy.

33. Tax

- 33.1 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.
- 33.2 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

The Short Form Contract

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 provision of the Deliverables by the Supplier or any of the Supplier Staff.

33.3 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 requirements that:

- (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 33.2, 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 33.2 or confirms that the Worker is not complying with those requirements; and
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

34. Conflict of interest

- 34.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 34.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 34.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential conflict of interest, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and clauses 11.5(a)(ii) to 11.5(a)(viii) shall apply.

35. Reporting a breach of the contract

- 35.1 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 28 to 34.
- 35.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 35.1 to the Buyer or a Prescribed Person.

The Short Form Contract

36. Further Assurances

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

37. Resolving disputes

- 37.1 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 by commercial negotiation.
- 37.2 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 37.3 to 37.5.
- 37.3 Unless the Buyer refers the dispute to arbitration using clause 37.4, 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.
- 37.4 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.
- 37.5 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 37.3, 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 37.4.
- 37.6 The Supplier cannot suspend the performance of the Contract during any dispute.

38. Which law applies

This Contract and any issues or disputes arising out of, or connected to it, are governed by English law.