



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contract Short Form Enhanced

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Department  
for Environment  
Food & Rural Affairs

TSI Instruments LTD

Stirling Road  
Cressex Business Park  
High Wycombe  
Buckinghamshire  
HP12 3ST  
UK

Attn: [REDACTED]

By email to: [REDACTED]

Date: 16/10/2024  
Your ref: 20285228  
Our ref: C26368

Dear [REDACTED]

**Supply of water-based Size Sorted Particle Sizer (SMPS) with Soft Ray Advanced Aerosol Neutralizer**

Following your tender/ proposal for the supply of 1 x water-based CPC and Xray SMPS to Environment Agency, we are pleased confirm our intention to award this contract to you.

The attached contract details ("**Order Form**"), contract conditions and the [**Annex/Annexes**] set out the terms of the contract between Environment Agency 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 the Conditions by signing and returning the Order Form to [REDACTED] at the above address within **[7]** days from the date of this letter, which will create a binding contract between us. No other form of acknowledgement will be accepted. Please remember to include the reference number above in any future communications relating to this contract.

We will then arrange for the Order Form to be countersigned so that you have a signed copy of the Order Form for your records.

Yours faithfully,



# Order Form

<b>1. Contract Reference</b>	C26368	
<b>2. Date</b>	30/09/2024	
<b>3. Authority</b>	<i>Environment Agency</i>  <i>Horizon House,</i> <i>Deanery Road, Bristol</i> <i>BS1 5AH</i>	
<b>4. Supplier</b>	TSI Instruments Ltd Stirling Rd Cressex Business Pk High Wycombe Buckinghamshire HP12 3ST UK  Reg No: 4486008	
<b>4a. Supplier Account Details</b>	<div style="background-color: black; height: 1.2em; width: 100%;"></div>	
<b>5. The Contract</b>	<p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("<b>Conditions</b>") and any [<b>Annex/Annexes</b>].</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any inconsistency between the provisions of the Order Form, the Conditions and the Annexes, the inconsistency shall be resolved by giving precedence in the following order:</p> <ol style="list-style-type: none"> <li>1. Order Form, Annex 2 (<i>Specification</i>) and Annex 3 (<i>Charges</i>) with equal priority.</li> <li>2. Conditions and Annex 1 (<i>Authorised Processing Template</i>) with equal priority.</li> <li>3. Annexes 4 (<i>Tender Submission</i>) and 5 (<i>Sustainability</i>).</li> </ol> <p>In the event of any inconsistency between the provisions of Annexes 4 and 5, Annex 5 shall take precedence over Annex 4.</p> <p><b>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Authority and may delay conclusion of the Contract.</b></p>	
<b>6. Deliverables</b>	<b>Goods</b>	1 x water-based CPC and Xray SMPS

		<p>Delivered in accordance with the following instructions:</p> <p>Delivery Address: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>Date of Delivery: 28<sup>th</sup> February 2025. The Supplier shall make every effort to deliver by the Date of Delivery</p> <p>Packaging Instructions: It is the supplier's obligation to ensure that the goods are insured against loss and damage and packed sufficiently to prevent damage during transit.</p>
	<b>Services</b>	<p>Training at NPL, 2-4 people</p> <p>Delivery to [REDACTED] [REDACTED]</p>
<b>7. Specification</b>	The Supplier's written, published specification of the Deliverables is as set out in Annex 2.	
<b>8. Term</b>	<p>The Term shall commence on <b>30/09/24</b> (the <b>Start Date</b>)</p> <p>and the Expiry Date shall be upon the warranty expiration for the relevant Goods.. Warranty is from approval of the Appendix 5– Analyser Acceptance Form</p>	
<b>9. Charges</b>	The Charges for the Deliverables shall be as set out in Annex 3.	

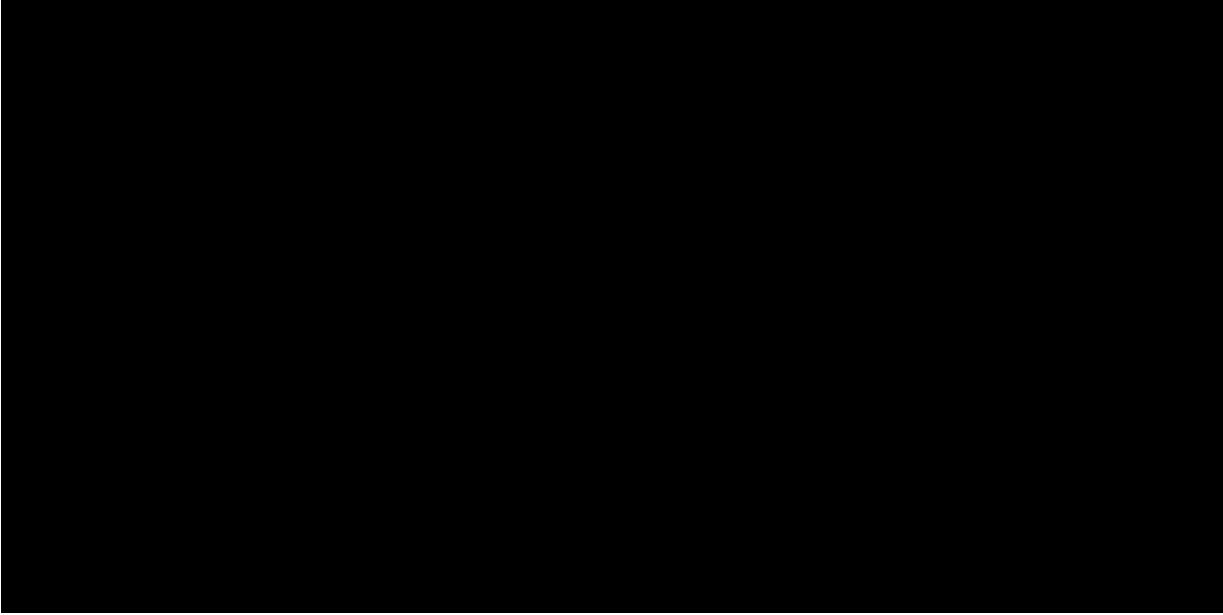


<b>13. Key Personnel</b>	<div> <div> <b>Authority:</b>  <div></div> </div> <div> <b>Supplier:</b>  <div></div> </div> </div> <div> <b>Attention:</b> <div></div> <b>Attention:</b> <div></div> </div> <div> <b>Email:</b> <div></div> <b>Email:</b> <div></div> </div>
<b>14. Procedures and Policies</b>	<p>For the purposes of the Contract the</p> <p>For the avoidance of doubt, if other policies of the Authority are referenced in the Conditions and Annexes, those policies will also apply to the Contract on the basis described therein.</p> <p>The Authority may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (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.</p>
<b>15. Limitation of Liabilities</b>	<p>In accordance with Conditions Clause 12.</p>
<b>16. Insurance</b>	<p>The Supplier shall effect and maintain adequate insurance during the Contract (and provide proof to the Authority when required) of at least the types and amounts in accordance with its current certificate of liability insurance. This is a procurement of equipment and we are relying on the warranty as detailed in Appendix 03</p>



Signed for and on behalf of the <b>Supplier</b>	Signed for and on behalf of the <b>Authority</b>
<b>Date:</b>	<b>Date:</b>
<b>Signature:</b>	<b>Signature:</b>

## Annex 2 – Specification



## Annex 3 – Charges

Defined terms within this Annex:

**E-Invoicing:** Means invoices created on or submitted to the Authority via the electronic marketplace service.

**Electronic Invoice:** Means an invoice (generally in PDF file format) issued by the Supplier and received by the Authority using electronic means, generally email

### 1. How Charges are calculated

#### 1.1 The Charges:

1.1.1 shall be calculated in accordance with the terms of this Annex 3

### 2. Are costs and expenses included in the Charges

2.1 Except as expressly set out in Paragraph 3 below, the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

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

2.1.2 costs incurred prior to the commencement of the Contract.

### 3. Rates and Prices

The Supplier has provided a quote as detailed below in Figure A3-1, alongside the current costs for parts (see table A3-1) listed in the maintenance manual, that may need repair throughout the life of the instrument. Pricing for parts (see table A3-1) is subject to change based on availability, material costs, and other market factors.



TSI Instruments Ltd  
Stirling Rd Cressex Business Pk  
High Wycombe  
Buckinghamshire HP12 3ST  
UK

Phone: +44-1494 459200  
Email: [tsiuk@tsi.com](mailto:tsiuk@tsi.com)  
Web: <http://www.tsi.com>

Page 1 of 2

## Quotation

<b>Quote Contact</b> [Redacted]		<b>Make PO Out To:</b> <b>TSI Instruments Ltd.</b>	
<b>Bill-To-Party</b> Environment Agency Richard Fairclough House Warrington WA4 1HT		Quotation Number 20285228 Quotation Date 03.07.2024 Customer No 538369 Customer Ref. Incoterms 2020 CPT: Prepay & Add Consignee's Premises Payment Terms Net 30 days Valid To 02.08.2024 Currency GBP	
<b>Ship-To-Party</b> Environment Agency Richard Fairclough House Warrington WA4 1HT			

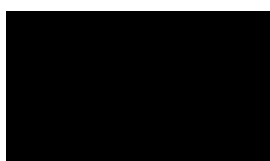
Item	Material/Description	Quantity	Unit Price	Amount
1	[Redacted]			
2	[Redacted]			
3	[Redacted]			
4	[Redacted]			
5	[Redacted]			
6	[Redacted]			
7	[Redacted]			
8	[Redacted]			

Figure 1: Quote from TSI for a water-based CPC and X-ray SMPS, as provided in response to the specification in Annex 1.

Table 1: 2024 pricing provided by TSI for the parts detailed in the instrument Manual that may require replacement during the lifetime of the instrument as provided by email

on 5 September 2024. Pricing for parts (see table A3-1) is subject to change based on availability, material costs, and other market factors.

Description	Price *
bypass filter (D, 6001326) There is not a separate price for these but there are 3 filters in 3789 -FKIT	
pump exhaust filter (E, 6001326) – within 3789 -FKIT	
make-up air filter (F, 6001326) within 3789 -FKIT	
bypass flow orifice (G, 6012217) – Part name 3789-byflow	
makeup flow orifice (H, 6012218) - part name 3789 HiFlow	
Replace internal HEPA filters (B, 1602051)- Needs to be attached to the inlet (not internal)	



#### 4. Currency

All Supplier invoices shall be expressed in sterling, or such other currency as shall be permitted by the Authority in writing.

#### 5. Electronic Invoicing

- 5.1 The Authority shall accept for processing any electronic invoice that it is valid, undisputed and complies with the requirements of the Authority's e-invoicing system:
- 5.2 The Supplier shall ensure that each invoice is submitted in a PDF format and contains the following information:
  - 5.2.1 the date of the invoice;
  - 5.2.2 a unique invoice number;
  - 5.2.3 the period to which the relevant Charge(s) relate;
  - 5.2.4 the correct reference for the Contract
  - 5.2.5 a valid Purchase Order Number;
  - 5.2.6 the dates between which the Deliverables subject of each of the Charges detailed on the invoice were performed;

- 5.2.7 a description of the Deliverables;
  - 5.2.8 the pricing mechanism used to calculate the Charges (such as fixed price, time and materials);
  - 5.2.9 Intentionally Omitted/Not Applicable.
  - 5.2.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any reimbursable expenses properly chargeable to the Authority under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same, charged at the prevailing rate;
  - 5.2.11 a contact name and telephone number of a responsible person in the Supplier's finance department and/or contract manager in the event of administrative queries; and
  - 5.2.12 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number);
- 5.3 The Supplier shall submit all invoices and any requested supporting documentation through the Authority's e-invoicing system or if that is not possible to: Shared Services Connected Ltd, PO Box 797, Newport, Gwent, NP10 8FZ; with a copy (again including any supporting documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 5.4 Invoices submitted electronically will not be processed if:
- 5.4.1 The electronic submission exceeds 4mb in size
  - 5.4.2 Is not submitted in a PDF formatted document
  - 5.4.3 Multiple invoices are submitted in one PDF formatted document
  - 5.4.4 The formatted PDF is "Password Protected"

# Annex 5 – Sustainability

## 1 Sustainability

- 1.1 The Supplier must comply with the Authority's Sustainability Requirements set out in this Contract. The Supplier must ensure that all Supplier Staff who are involved in the performance of the Contract are aware of these requirements in accordance with clauses 8.1(c) and 13.2. Unless otherwise agreed by the parties in writing, the parties agree that there is no expectation to use subcontractors for this Contract. Notwithstanding anything to the contrary in the Supplier Code of Conduct or this Contract, the Supplier shall not be required to ensure its subcontractors also comply with the Supplier Code of Conduct.
- 1.2 The Authority requires its suppliers to meet the standards set out in the Supplier Code of Conduct in accordance with clause 13.1(c).
- 1.3 The Supplier must comply with all applicable legislation as per clause 13.1.

## 2 Human Rights

- 2.1 The Authority is committed to ensuring that workers employed within its supply chains are treated fairly, humanely, and equitably. The Authority requires the Supplier to share this commitment and to take reasonable and use reasonable and proportionate endeavours to identify any areas of risk associated with this Contract to ensure that it is meeting the International Labour Organisation International Labour Standards which can be found online - [Conventions and Recommendations \(ilo.org\)](http://ilo.org) and at a minimum comply with the Core Labour Standards, encompassing the right to freedom of association and collective bargaining, prohibition of forced labour, prohibition of discrimination and prohibition of child labour.
- 2.2 The Supplier undertakes to comply strictly with all mandatory regulations applicable to labour law and relevant to its operations.

## 3 Equality, Diversity and Inclusion (EDI)

- 3.1 The Supplier is committed to ensuring that the Supplier and Supplier Staff in the delivery of its obligations under this Contract:
- 3.1.1 do not unlawfully discriminate either directly or indirectly because of race, colour, ethnic or national origin, disability, sex, sexual orientation, gender reassignment, religion or belief, pregnancy and maternity, marriage and civil partnership or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010;

- 3.1.2 will not discriminate because of socio-economic background, working pattern or having parental or other caring responsibilities;
- 3.1.3 eliminates discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Equality Act 2010;
- 3.1.4 advances equality of opportunity between people who share a protected characteristic and those who do not;
- 3.1.5 foster good relations between people who share a protected characteristic and people who do not share it;

## **4 Environment**

- 4.1 The Supplier agrees to comply with international, national, and local environmental protection regulations relevant to its operations, as required by law. The Supplier is not obligated to commit to any obligations beyond those legally mandated.

## **5. Social Value**

- 5.1 Intentionally Omitted.
- 5.2 The Supplier will ensure that supply chain opportunities are inclusive and accessible to the extent required by law and relevant to its operations, as required by law.



# Short Form Terms

## 1. Definitions used in the Contract

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

"Authority"	means the authority identified in paragraph 3 of the Order Form;
"Authority 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 Authority's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Authority; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Authority is the Data Controller;
"Authority Cause"	any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Authority is liable to the Supplier;
"Central Government Body"	for the purposes of this Contract this means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>• Government Department;</li><li>• Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>• Non-Ministerial Department; or</li><li>• Executive Agency;</li></ul>
"Charges"	means the charges for the Deliverables as specified in the Order Form and Annex 3;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is agreed by the Parties to be confidential;

"Contract"	means this contract between (i) the Authority and (ii) the Supplier which is created by the Supplier signing the Order Form and returning it to the Authority.
"Controller"	has the meaning given to it in the "UK GDPR";
"Crown Body"	means any department, office or agency of the Crown, including any and all Local Authority bodies;
"Data Loss Event"	any event that results in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual 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"	(i) the UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject"	has the meaning given to it in the GDPR;
"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"	means that date by which the Deliverables are to be delivered to the Authority, as specified in the Order Form;
"Deliver"	means handing over the Deliverables to the carrier in accordance with 2020 CPT Incoterms, unless otherwise agreed in writing;
"Deliverables"	Goods and/or Services that may be ordered under the Contract including the Documentation;

"Documentation"	<p>Supplier's written, published materials that Supplier provides standard with the Goods and/or Services, as determined by the Supplier, which may include user manuals, instructional guides, or other supporting documents (whether in hardcopy or electronic form). Supplier retains sole discretion over Documentation including, but not limited to, content and format. Documentation is required to be supplied by the Supplier to the Authority under the Contract as:</p> <p>a) is required by the Supplier in order to provide the Deliverables; and/or</p> <p>b) has been generated for the purpose of providing the Deliverables</p>
"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"	means the date for expiry of the Contract as set out in the Order Form;
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract, including but not limited to, shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of Seller, but excluding: i) 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 ii) any failure of delay caused by a lack of funds;
"Goods"	means the goods to be supplied by the Supplier to the Authority 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;
"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"	occurs in respect of a legal person (for example an individual, company or organisation): i) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; or iv) if the person makes any arrangement with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction whether under the Insolvency Act 1986 or otherwise;
"IP Completion Day"	has the meaning given to it in the European Union (Withdrawal) Act 2018;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Authority to the Supplier in writing;
"Law"	means any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (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 Parties are bound to comply;
"New IPR"	all and any intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
"Order Form"	means the letter from the Authority to the Supplier printed above these terms and conditions;
"Party"	the Supplier or the Authority (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the UK GDPR;
"Personal Data Breach"	has the meaning given to it in the UK GDPR;
"Processing"	has the mean given to it in the UK GDPR;
"Processor"	has the meaning given to it in the UK GDPR;
"Purchase Order Number"	means the Authority's unique number relating to the order for Deliverables to be supplied by the Supplier to the Authority in accordance with the terms of the Contract;
"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"	means the services to be supplied by the Supplier to the Authority under the Contract;
"Specification"	means the specification for the Deliverables to be supplied by the Supplier to the Authority (including as to quantity, description and quality) as specified in Annex 2;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice;
"Start Date"	Means the start date of the Contract set out in the Order Form;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any subcontractor engaged in the performance of the Supplier's obligations under the Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Sustainability Requirements"	means any relevant social or environmental strategies, policies, commitments, targets, plans or requirements that apply to and are set out in the Annex 5;
Tender Submission	means the Supplier's response to the invitation to the bidder pack (including, for the avoidance of doubt, any clarification provided by the Supplier).
"Term"	means the period from the Start Date to the Expiry Date as such period may be terminated in accordance with Clause 11;
"UK GDPR"	means 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) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

"Workers"	any one of the Supplier Staff which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2. Understanding the Contract

In the Contract, unless the context otherwise requires:

2.1 references to numbered clauses are references to the relevant clause in these terms and conditions and references to numbered paragraphs are references to the paragraph in the relevant Annex;

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 any reference in this Contract which immediately before the 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):

- i. any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area ("EEA") agreement ("EU References") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- ii. any EU institution or EU authority or other such EU body shall be read on and after the date of exit from the EU as a reference to the UK institution, authority or body to which its functions were transferred.

2.8 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation";

2.9 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

2.10 any Annexes form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Annexes; and

2.11 all undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

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

3.1 The Order Form is an offer by the Authority 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 Authority receives a copy of the Order Form signed by the Supplier.

3.3 The Supplier warrants and represents that its Tender Submission 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 and Tender Submission; (ii) to a professional standard; (iii) using all reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) in accordance with such policies and procedures of the Authority that may be specified in the Contract (vii) on the dates agreed; and (viii) in compliance with all applicable Law.

(b) Without prejudice to the Specification the Supplier must provide Goods with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to the Authority) from Delivery against defects in material and workmanship.



## 4.2 Goods clauses

(a) All Goods Delivered must be capable of meeting the requirements set out in the Specification and be either (i) new and of recent origin, (ii) reused or (iii) recycled.

(b) All manufacturer warranties covering the Goods will be assigned to the Authority on request.

(c) The Supplier transfers ownership of the Goods when the Supplier is paid in full for those Goods.

(d) Risk in the Goods transfers to the Authority on Delivery but remains with the Supplier if the Authority notices any damage or defect following Delivery and lets the Supplier know within three Working Days of Delivery.

(e) The Supplier must have 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 specified location during the Authority's working hours.

(g) The Supplier, its subcontractor(s) and supply chain must minimise packaging used whilst providing sufficient packaging for the Goods to reach the point of Delivery safely and undamaged. The Supplier must take back any primary packaging where it is possible to do so. Packaging must be 100% re-usable, recyclable or compostable, use recycled content where reasonably practicable and support the Government's commitment to eliminate single use plastic.

(h) All Deliveries must have a delivery note attached that specifies the order number, type, quantity of Goods, contact and details of traceability through the supply chain.

(i) The Supplier must provide all tools, information and instructions the Authority needs to make use of the Goods. This will include, where appropriate, any operation manuals which, unless specified otherwise, will be written in English and provided in electronic form.

(j) Goods must be disposed of in line with the Supplier's waste management hierarchy and in accordance with the relevant Law.

(k) The Authority can cancel any order or part order of Goods which have not been Delivered. If the Authority gives less than 14 calendar 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 steps to minimise these costs.

(l) The Supplier must at its own cost repair, replace, refund or substitute (at the Authority's option and request) any Goods that the Authority rejects because they don't conform with clause 4.2.

(m) The Authority 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 Authority or its servant or agent.

#### **4.3 Services clauses**

(a) Late delivery of the Services will be a breach of the Contract

(b) The Supplier must co-operate with the Authority and third-party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.

(c) The Authority must provide the Supplier Staff with reasonable access to its premises at such reasonable times agreed with the Authority for the purpose of supplying the Services.

(d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Authority to the Supplier for supplying the Services remains the property of the Authority and is to be returned to the Authority 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 Authority's operations, employees or other contractors.

(g) On completion of the Services, the Supplier is responsible for leaving the Authority's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Authority's premises or property, other than fair wear and tear and any pre-existing cleanliness, safety or tidiness issue at the Authority's premises that existed before the commencement of the Term.

(h) The Supplier will ensure that all Services are performed with reasonable skill, care, and diligence, in accordance with industry standards. The Supplier will use suitable materials, tools, and resources to deliver the Services and will take reasonable steps to ensure these do not impede the quality or effectiveness of the Services.

(i) The Authority is entitled to withhold payment for partially or undelivered Services or for Services which are not delivered in accordance with the Contract. The Supplier will be given a reasonable opportunity to rectify any deficiencies before payment is withheld. Withholding payment does not stop the Authority from using its other rights under the Contract, provided they do so in good faith and in accordance with agreed-upon dispute resolution procedures.

## 5. Pricing and payments

5.1 In exchange for the Deliverables delivered, the Supplier shall be entitled to invoice the Authority for the charges in Annex 3. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.

5.2 All Charges:

- (a) exclude VAT, which is payable on provision of a valid VAT invoice and charged at the prevailing rate;

- (b) include all costs connected with the supply of Deliverables.

5.3 The Authority must pay the Supplier the charges within 30 days of receipt by the Authority of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.

5.4 A Supplier invoice is only valid if it:

- (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Authority as set out in Annex 3; and

- (b) includes a detailed breakdown of Deliverables which have been delivered (if any).

Details of the Authority's requirements for a valid invoice at the Start Date are set out in Annex 3.

5.5 If there is a dispute between the Parties as to the amount invoiced, the Authority 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 35.

5.6 Intentionally Omitted.

5.7 The Supplier must ensure that its subcontractors and supply chain are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Authority can publish the details of the late payment or non-payment.

## 6. The Authority's obligations to the Supplier

6.1 If the Supplier fails to comply with the Contract as a result of an Authority Cause:

- (a) the Authority cannot terminate the Contract under clause 11 on account of the failure to comply, provided this will not prejudice the Authority's right to terminate for another cause that may exist at the same time;

(b) the Supplier will be relieved from liability for the performance of its obligations under the Contract to the extent that it is prevented from performing them by the Authority Cause and will be entitled to such reasonable and proven additional expenses that arise as a direct result of the Authority Cause;

(c) the Supplier is entitled to any additional time needed to deliver the Deliverables as a direct result of the Authority's Cause;

(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 Authority within 10 Working Days of becoming aware of an Authority Cause, such notice setting out in detail with supporting evidence the known reasons for the Authority Cause;

(b) demonstrates that the failure only happened because of the Authority Cause;

(c) has used all reasonable endeavours to mitigate the impact of the Authority Cause.

## 7. Record keeping and reporting

7.1 The Supplier must ensure that suitably qualified (and authorised) representatives attend progress meetings with the Authority and provide progress reports when specified in Annex 2.

7.2 The Supplier will keep and maintain relevant records and accounts related to the Contract for a period of one (1) year after the date of expiry or termination, or for the minimum period required by applicable law, whichever is longer. These records shall be sufficient to demonstrate compliance with the Supplier's obligations under the Contract..

7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

(a) tell the Authority and give reasons;

(b) propose corrective action;

(c) agree a deadline with the Authority for completing the corrective action.

7.6 If the Authority, acting reasonably, is concerned either:

(a) as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract; or

(b) as to the sustainability or health and safety conduct of the Supplier, subcontractors and supply chain in the performance of the Contract;

then the Authority may:

(i) require that the Supplier provide to the Authority (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract (in the case of (a)) and the Supplier will make changes to such plan as reasonably required by the Authority and once it is agreed then the Supplier shall act in accordance with such plan and report to the Authority.

(ii) if the Supplier fails to provide a plan or materially fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Authority notifies).

## **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 using Good Industry Practice and in accordance with the instructions issued by the Authority in the Order Form;
- c) comply with the Authority's conduct requirements when on the Authority's premises including, without limitation, those Sustainability Requirements relating to Equality, Diversity & Inclusion (EDI) contained in Annex 5; and
- d) be informed about those specific requirements referred to in Clause 13.2.

8.2 Where an Authority reasonably 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 8.

8.4 The Supplier must provide a list of Supplier Staff needing to access the Authority's premises and say why access is required.

8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide 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) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;

(f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and

(g) it is not impacted by an Insolvency Event.

9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

9.3 The Supplier indemnifies the Authority against each of the following:

(a) intentionally omitted;

(b) non-payment by the Supplier of any tax or National Insurance.

9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must promptly notify the Authority.

9.5 All third-party warranties and indemnities covering the Deliverables must be assigned for the Authority's benefit by the Supplier.

## 10. Intellectual Property Rights (IPRs)

10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier grants to the Authority a non-exclusive, non-transferable, perpetual, world-wide and fully paid up license to use, copy, modify, prepare derivative works of and in any other way exploits the Deliverables and all Supplier intellectual property rights in the Deliverables for internal use only, to the extent necessary to receive and use the Deliverables.

10.2 Intentionally Omitted.

10.3 Intentionally Omitted.

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 In the event any Deliverables to be furnished under this Contract is not to be made in accordance with drawings, samples or manufacturing specifications designated by the Authority, but rather is solely the design of the Supplier, the Supplier agrees that it shall, at its own expense and at its option, defend or settle any claim, suit, or

proceeding brought against the Authority, based on an allegation that the Deliverables furnished under this Contract constitutes a direct infringement of any claim of any patent, mask work, copyright or any other intellectual property right. This obligation shall be effective only if the Authority shall have made all payments, then due and if the Supplier is notified of said allegation promptly in writing and given authority, information, and assistance for the settlement or defence of said claim, suit, or proceeding. The Supplier shall pay all damages and costs assessed in such suit or proceedings.

The foregoing indemnity does not apply to the following: (1) infringement by a combination of Deliverables furnished under this Contract with other products not furnished hereunder unless the Supplier is a contributory infringer; (2) infringement resulting from the Authority's use of the Deliverables in a manner inconsistent with the Supplier's written and publicly available documentation; (3) infringement resulting from changes or modifications made to or from the product by the Authority; and (4) any settlements of a claim, suit, or proceeding made without the Supplier's written consent.

The foregoing states the entire liability of Seller with respect to infringement or violation of third-party intellectual property rights in connection with Deliverables furnished under this Contract.

10.6 In the event of a final adjudication by a court of competent jurisdiction that its product or any part thereof infringes or violates any third party intellectual property right or if the sale thereof is enjoined, the Supplier shall at its sole option and its own expense, either: (a) procure for the Authority the right to continue using the Deliverables; or (b) replace the Deliverables with substantially equivalent non-infringing Deliverables; or (c) modify the Deliverables so they become non-infringing but substantially equivalent; or (d) if none of the above is reasonably available, terminate the Authority's right to use the Deliverables, accept the return of the Deliverables from the Authority, and return to the Authority the pro rata amount of the price originally paid by the Authority to Supplier for the Deliverables supplied by the Supplier, based on a three year life.

## **11. Ending the contract**

11.1 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

11.2 Any extension of the Contract beyond the original term as set out in the Order Form shall require mutual written agreement between the Authority and the Supplier.

### **Ending the Contract without a reason**

11.3 The Authority 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 the Contract is terminated, clause 11.5(b) to 11.5(g) applies.

### **When the Authority can end the Contract**

11.4 (a) If any of the following events happen, the Authority has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:

(i) there is a Supplier Insolvency Event;

(ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify in the Authority's opinion that the Supplier's conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;

(iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied. Where a material breach is not capable of remedy, the Authority has the right to immediately terminate the Contract;

(iv) there is a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Authority in writing;

(v) if the Authority 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 Authority into disrepute or diminish the public trust in them;

(vii) where a right to terminate described in clause 27 occurs;

(viii) the Supplier is in breach of any of its health, safety and well-being obligations under clause 28.1(a); and

(ix) where, in accordance with clause 33.3, there is or may be an actual or potential conflict of interest.

(b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Authority has the right to immediately terminate the Contract and clause 11.5(a) to 11.5(g) applies.

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

Where the Authority terminates the Contract under clause 11.4 all of the following apply:

(a) the Authority's payment obligations under the terminated Contract stop immediately;

(b) accumulated rights of the Parties are not affected;



(c) the Supplier must promptly delete or return the Authority Data except where required to retain copies by law;

(d) the Supplier must promptly return any of the Authority's property provided under the Contract;

(e) intentionally omitted;

(f) intentionally omitted.

## **11.6 When the Supplier can end the Contract**

(a) The Supplier can issue a reminder notice if the Authority does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Authority 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) If a Supplier terminates the Contract under clause 11.6(a):

(i) the Authority must promptly pay all outstanding charges incurred to the Supplier;

(ii) the Authority must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with satisfactory evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;

(iii) clauses 11.5(d) to 11.5(g) apply.

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

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

12.1 Each Party's and its Affiliates' total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than the value of the Charges or £500,000 (five hundred thousand pounds) whichever is lower unless specified in the Order Form.

12.2 No Party is liable to the other for:

(a) any indirect or consequential losses;

(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;

(c) any liability that cannot be excluded or limited by law.

12.4 Intentionally Omitted. In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.3, 15.28(e) or 31.2(b).

12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including where the loss or damage is covered by any indemnity.

12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

### 13. Obeying the law

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

- (a) comply with all applicable Law;
- (b) comply with the Sustainability Requirements
- (c) use reasonable endeavours to comply with the Supplier Code of Conduct appearing at:

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

13.2 The Sustainability Requirements and the requirements set out in Clause 27, 28 and 30 must be explained to the Supplier's Staff who are involved in the performance of the Supplier's obligations under the Contract.

13.3 Intentionally Omitted.

13.4 Intentionally Omitted.

13.5 Intentionally Omitted.

13.6 The Supplier will provide such evidence of compliance with its obligations under this Clause 13 as the Authority reasonably requests in writing and subject to obligations of confidentiality.

## 14. Insurance

14.1 The Supplier must, at its own cost, obtain and maintain the required insurances as set out in the Order Form.

14.2 The Supplier will provide evidence of the required insurances on request from the Authority.

## 15. Data protection

15.1 The Authority is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.

15.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with its own data protection policies.

15.3 The Supplier shall take all reasonable measures relating to the security of processing which are required pursuant to Article 32 of the UK GDPR including, without limitation, those security measures specified in this clause 15.

15.4 The Supplier must not remove any ownership or security notices in or relating to the Authority Data.

15.5 Intentionally Omitted/Not applicable.

15.6 The Supplier must ensure that any Supplier system holding any Authority Data, including back-up data, is a secure system that complies with the security requirements specified in writing by the Authority.

15.7 To the extent required by the relevant Data Protection Legislation, if at any time the Supplier suspects or has reason to believe that the Authority Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and promptly suggest remedial action.

15.8 Intentionally Omitted/Not Applicable.

15.9 Intentionally Omitted/Not Applicable.

15.10 Only the Authority can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex 1 of the Order Form (*Authorised Processing*).

15.11 The Supplier must only process Personal Data if authorised to do so in the Annex to the Order Form (*Authorised Processing*) by the Authority. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 of the Order Form.

15.12 Intentionally Omitted/Not Applicable.

15.13 The Supplier must notify the Authority immediately if it thinks the Authority's instructions breach the Data Protection Legislation.

15.14 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event.

15.15 If lawful to notify the Authority, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.

15.16 Intentionally Omitted/Not Applicable.

15.17 The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:

- (a) it has obtained prior written consent of the Authority;
- (b) there are appropriate safeguards (in accordance with Article 46 of the UK GDPR);
- (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
- (d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (e) where the Supplier is not bound by Data Protection Legislation it must use its reasonable endeavours to help the Authority meet its own obligations under Data Protection Legislation; and
- (f) the Supplier complies with the Authority's reasonable prior instructions about the processing of the Personal Data (if applicable).

15.18 To the extent required by the relevant Data Protection Legislation, the Supplier must notify the Authority promptly if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) 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;

(f) becomes aware of a Data Loss Event.

15.19 Any requirement to notify under clause 15.17 includes the provision of further information to the Authority in stages as details become available.

15.20 The Supplier must promptly provide the Authority with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.17. This includes giving the Authority:

- (a) full details and copies of the complaint, communication or request;
- (b) reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
- (c) any Personal Data it holds in relation to a Data Subject on request;
- (d) assistance that it requests following any Data Loss Event;
- (e) assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office.

15.21 The Supplier must maintain full, accurate records and information to show it complies with this clause 15. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Authority determines that the processing:

- (a) is not occasional;
- (b) 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;
- (c) is likely to result in a risk to the rights and freedoms of Data Subjects.

15.22 The Supplier will make available to the Authority all information necessary to demonstrate compliance with clause 15 and allow for and contribute to audits, including inspections, conducted by the Authority or another auditor appointed by the Authority.

15.23 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Contract and give the Authority their contact details.

15.24 Before allowing any Subprocessor to process any Personal Data, the Supplier must:

- (a) notify the Authority in writing of the intended Subprocessor and processing;
- (b) obtain the written consent of the Authority;

(c) enter into a written contract with the Subprocessor so that this clause 15 applies to the Subprocessor;

(d) provide the Authority with any information about the Subprocessor that the Authority reasonably requires.

15.25 The Supplier remains fully liable for all acts or omissions of any Subprocessor.

15.26 Intentionally Omitted/Not Applicable.

15.27 Intentionally Omitted/Not Applicable.

15.28 Intentionally Omitted/Not Applicable.

## 16. What you must keep confidential

16.1 Each Party must:

(a) keep all Confidential Information it receives confidential and secure;

(b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;

(c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

16.2 In spite of clause 16.1, 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, permitted in respect of an audit pursuant to clause 7.3, or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

(b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;

(c) if the information was given to it by a third party without obligation of confidentiality;

(d) if the information was in the public domain at the time of the disclosure;

(e) if the information was independently developed without access to the disclosing Party's Confidential Information;

(f) to its auditors or for the purposes of regulatory requirements;

(g) on a confidential basis, to its professional advisers on a need-to-know basis;

(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.

16.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Authority at its request, provided that such confidentiality agreement is reviewed by the Supplier and, if necessary, negotiated by the Parties in good faith. No such confidentiality agreement with the Authority shall be required if such negotiations are unsuccessful.

16.4 The Authority may disclose Confidential Information in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any organisation that the Authority transfers or proposes to transfer all or any part of its business to;
- (c) if the Authority (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (d) where requested by Parliament; and/or
- (e) under clauses 5.7 and 17.

16.5 For the purposes of clauses 16.2 to 16.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 16.

16.6 Information which is exempt from disclosure by clause 17 is not Confidential Information.

16.7 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 Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

16.8 Where essential to comply with or carry out their statutory functions the Authority may disclose Confidential Information.

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

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

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

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

17.3 The Authority may talk to the Supplier to help it decide whether to publish information under clause 17. However, the extent, content and format of the disclosure is the Authority's decision, which does not need to be reasonable.

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

## **19. No other terms apply**

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

## **20. Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (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;
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

21.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event and the impact of such event lasts for 90 days continuously.

21.3 Where a Party terminates under clause 21.2:

- (a) each party must cover its own losses;
- (b) clause 11.5(b) to 11.5(g) 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 the Contract, or any rights under it, without the Authority's written consent.

24.2 The Authority can assign, novate or transfer its Contract or any part of it to any Crown Body, any contracting authority within the meaning of the Regulations or any private sector body which performs the functions of the Authority.

24.3 When the Authority uses its rights under clause 24.2 the Supplier must enter into a novation agreement in the form that the Authority specifies.

24.4 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

24.5 Intentionally Omitted/Not Applicable.

## **25. Changing the contract**

25.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. No oral modifications to the Contract shall be effective. The Authority is not required to accept a variation request made by the Supplier.

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

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

26.2 Notices to the Authority or Supplier must be sent to their address in the Order Form.

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

## **27. Preventing fraud, bribery and corruption**

27.1 The Supplier shall not:

- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
- (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Authority 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.

27.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 27.1 and any fraud by the Supplier, Supplier Staff (including its shareholders, members and directors), any subcontractor and the Supplier's supply chain in connection with the Contract. The Supplier shall notify the Authority immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

27.3 If the Supplier or the Supplier Staff engages in conduct prohibited by clause 27.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Authority) the Authority may:

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

## **28. Health, safety and wellbeing**

28.1 The Supplier must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety;
- (b) the Authority's current health and safety policy and procedures while at the Authority's premises, as provided to the Supplier at least thirty (30) days in advance of such visit.
- (c) the Authority's current wellbeing policy or requirements while at the Authority's premises as provided to the Supplier at least thirty (30) days in advance of such visit.

28.2 The Supplier and the Authority must as soon as possible notify the other of any health and safety incidents, near misses or material hazards they're aware of at the Authority premises that relate to the performance of the Contract.

28.3 Where the Services are to be performed on the Authority's premises, the Authority shall be responsible for conducting any necessary risk assessments in accordance with its own safety protocols and procedures. The Supplier will provide reasonable assistance to the Authority by supplying relevant information about the Services and cooperating with any site-specific safety requirements communicated by the Authority.

28.4 The Supplier must ensure their health and safety policy statement and management arrangements are kept up to date and made available to the Authority on request.

28.5 The Supplier shall not assign any role to the Authority under the Construction (Design and Management) Regulations 2015 (as amended) (the 'CDM Regulations') without the Authority's prior express written consent (which may be granted or withheld at the Authority's absolute discretion). For the avoidance of doubt so far as the Authority may fall within the role of client as defined by the CDM Regulations in accordance with CDM Regulation 4(8) the parties agree that the Supplier will be the client.

## **29. Business Continuity**

29.1 The Supplier will have a current business continuity plan, which has assessed the risks to its business site/s and activities both directly and with regards to reliance on the supply chain and will set out the contingency measures in place to mitigate them and adapt. As part of this assessment, the Supplier will take into account the business continuity plans of the supply chain.

29.2 The Supplier's business continuity plan will be reviewed by the Supplier at regular intervals and after any disruption.

## **30. Whistleblowing**

30.1 The Supplier shall implement and maintain its own whistleblowing policy to ensure that Supplier Staff have a clear, confidential channel for reporting any concerns related to unethical, illegal, or unsafe practices. The Supplier's policy must comply with applicable legal and regulatory requirements and provide mechanisms for promptly investigating and addressing any reported issues.

## **31. Tax**

31.1 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 Authority cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 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 this Contract, the Supplier must both:

(a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;

(b) indemnify the Authority 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.

31.3 Intentionally Omitted/Not Applicable.

## **32. Publicity**

32.1 The Supplier and any subcontractor shall not make any press announcements or publicise this Contract or its contents in any way; without the prior written consent of the Authority.

32.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **33. Conflict of interest**

33.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority.

33.2 The Supplier must promptly notify and provide details to the Authority if a conflict of interest happens or is expected to happen.

33.3 The Authority can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

## **34. Reporting a breach of the contract**

34.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Authority any actual or suspected breach of Law or breach of its obligations under the Contract.

34.2 Where the breach is material, the Authority has the right to terminate under clause 11.4.

34.3 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 34.1.

## 35. Resolving disputes

35.1 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.

35.2 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 35.3 to 35.5.

35.3 Unless the Authority refers the dispute to arbitration using clause 35.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the dispute;
- (b) grant interim remedies;
- (c) grant any other provisional or protective relief.

35.4 The Supplier agrees that the Authority 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.

35.5 The Authority has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 35.3, unless the Authority 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 35.4.

35.6 The Supplier cannot suspend the performance of the Contract during any dispute.

35.7 The provisions of this clause 35 are without prejudice to the Authority's right to terminate or suspend the Contract under clause 11.

## 36. Which law applies

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

36.2 The courts of England and Wales shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with the Contract or its subject matter or formation.