

DATED **2021**

THE SECRETARY OF STATE FOR (1)
WORK AND PENSIONS

AND

MITIE FM LIMITED (2)

CONTRACT

CONTRACT FOR THE PROVISION OF
LIFE SYSTEMS SERVICES

MILLS & REEVE

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THIS CONTRACT is made on

2021 **BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS**, acting as part of the Crown ("**Buyer**"); and
- (2) **MITIE FM LIMITED** (company number 03253304) whose registered office is at Level 12, The Shard, 32 London Bridge Street, London, England, SE1 9SG ("**Supplier**"),

each a "**Party**" and together the "**Parties**".

BACKGROUND TO THIS CONTRACT:

- (A) The Buyer operates from a number of premises in the Buyer Estate and wishes to appoint the Supplier under the Crown Commercial Services framework reference RM3830 to provide management and maintenance services in relation to life systems across the Buyer Estate.
- (B) Following the valid completion and execution of the Order Form, this Contract is deemed to be a Call-Off Contract under the Framework Contract.
- (C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

OPERATIVE TERMS:

1 How the Contract works

- 1.1 Following the valid completion and execution of the Order Form, this Contract shall be legally binding from the Effective Date until it ends in accordance with Clause 11 (*Ending or extending this Contract*).
- 1.2 The Core Terms are amended as set out in these Special Terms. The Joint Schedules and the Call-Off Schedules are amended as set out in the Schedules attached to these Special Terms.
- 1.3 This Contract is a separate Contract from the Framework Contract and survives the termination of the Framework Contract.
- 1.4 This Contract is formed by the Special Terms, the Joint Schedules and the Call-Off Schedules and the Supplier must comply with all of its obligations set out in the Special Terms, the Joint Schedules and the Call-Off Schedules, provided always that in the event of any conflict between these documents, the conflict shall be resolved according to the following descending order of priority:
 - 1.4.1 the Special Terms;
 - 1.4.2 Joint Schedule 1 (*Definitions and Interpretation*);
 - 1.4.3 Joint Schedule 11 (*Processing Data*);
 - 1.4.4 the provisions regarding SFG20 in "Attachment 3 – Specification Annex A – Deliverables" and the "Attachment 3 – Specification Annex B – Standards and Processes", both contained within the Specification;

- 1.4.5 without prejudice to Clause 1.4.4 and where the conflict relates to any element of the Remedial Work, Annex F of the Specification;
- 1.4.6 without prejudice to Clause 1.4.4 and where the conflict relates to the Deliverables but excluding the Remedial Work, Attachment 3 to Annex A of the Specification;
- 1.4.7 the remainder of the Specification and the Pricing Matrix;
- 1.4.8 the remaining Joint Schedules and Call-Off Schedules (save as set out in Clause 1.4.9; and
- 1.4.9 Joint Schedule 5 (*Corporate Social Responsibility*).
- 1.5 The Parties shall interpret this Contract using Joint Schedule 1 (*Definitions and Interpretation*).
- 1.6 It shall be a condition precedent to the obligation of the Buyer to pay any sums under this Contract until the Supplier has procured:
 - 1.6.1 that the Guarantor has validly executed the Guarantee and delivered the Guarantee to the Buyer;
 - 1.6.2 that, in the event that the Buyer requests a Performance Bond in connection with any construction works, the Bondsman has validly executed the Performance Bond (if applicable) and delivered the Performance Bond (if applicable) to the Buyer (for the avoidance of doubt, the Supplier shall be afforded a reasonable period of time to procure and provide the Performance Bond following a request for the same from the Buyer); and
 - 1.6.3 the delivery to the Buyer of the board minutes and/or resolution of the Guarantor approving the execution and delivery of the Guarantee.

Due diligence

- 1.7 The Supplier shall undertake due diligence in relation to the Due Diligence Information and in any event on or before expiry of the Due Diligence Period.
- 1.8 As part of its due diligence, the Supplier shall:
 - 1.8.1 make its own enquiries to satisfy itself as to the accuracy, completeness and adequacy of the Due Diligence Information;
 - 1.8.2 satisfy itself (whether by inspection or having raised all relevant due diligence questions with the Buyer) of all relevant details relating to the Due Diligence Information; and
 - 1.8.3 provide to the Buyer any reasonable information requested by the Buyer in relation to the Supplier's enquiries and analysis regarding the Due Diligence Information.
- 1.9 Notwithstanding any other provision of this Contract, from the expiry of the Due Diligence Period, the Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of:

1.9.1 any misinterpretation of the Due Diligence Information and/or this Contract; and/or

1.9.2 any failure by the Supplier to satisfy itself as to the accuracy, completeness and/or adequacy of the Due Diligence Information,

and there shall be no entitlement to a Variation and there shall be no effect on the charges in relation to such grounds.

1.10 Either Party shall notify the other and the Buyer's Authorised Representative as soon as it becomes aware of any material inaccuracy, ambiguity, discrepancy, omission, mistake or inconsistency (each known as an "Inaccuracy") in the Due Diligence Information.

1.11 All costs associated with the due diligence exercise shall be borne by the Supplier.

1.12 Where Inaccuracies in the Due Diligence Information are identified by either Party prior to the expiry of the Due Diligence Period, the Parties may, using the Variation Procedure, request an upward or downward adjustment (as the case may be) to any part of the Fixed Monthly Fee, provided that the Supplier shall only be entitled to an upward adjustment to such part of the Fixed Monthly Fee where:

1.12.1 the Inaccuracy could not reasonably been discovered by the Supplier prior to entering into this Contract; and

1.12.2 the Supplier can present written evidence that the Due Diligence Information provided by the Buyer prior to entering into the Contract contained Inaccuracies that led to an incorrect pricing by the Supplier.

2 Appointment

2.1 The Buyer hereby appoints the Supplier as the provider of the Services during the Contract Period.

2.2 The Supplier agrees that the Buyer's Authorised Representative shall be entitled to issue any instruction for and on behalf of the Buyer under this Contract, save in relation to any Reserved Matters (where relevant).

2.3 From the Effective Date the Supplier shall appoint a Supplier Authorised Representative who shall be responsible for the management of the Contract, who will act as a point of contact for the Buyer and have authority to issue instructions on behalf of the Supplier.

3 What needs to be delivered

The Services

3.1 The Supplier must provide the Deliverables:

3.1.1 in full compliance with the Specification;

3.1.2 to a professional standard;

3.1.3 with reasonable skill and care;

3.1.4 using Good Industry Practice;

- 3.1.5 in accordance with its own policies, processes and quality control measures to the extent that these do not conflict with this Contract;
- 3.1.6 in accordance with this Contract;
- 3.1.7 in accordance with the PPM Plan, Remedial Work Programme and Backlog Remedial Work Programme;
- 3.1.8 in accordance with Law; and
- 3.1.9 in a manner that ensures that neither it, nor any of the Supplier Staff:
 - (i) brings the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in any or all of them; and/or
 - (ii) engages in any act or omission which is reasonably likely to bring the Deliverables into disrepute,
 in either case, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.

3.2 The Supplier must:

- 3.2.1 co-operate, collaborate with and, where appropriate, consult with the Buyer Supply Chain Members, any landlord of the Buyer, the Buyer's third party Suppliers and any other relevant third party notified to the Supplier by the Buyer and/or the Supply Chain Integrator, on all aspects connected with the delivery of the Services; and
- 3.2.2 ensure that Supplier Staff comply with any reasonable instructions of the Buyer in relation to the Services.

Impact of approval by the Buyer

- 3.3 The Supplier agrees and accepts that except for confirmation of a Variation pursuant to Clause 25 (*Changing this Contract*), which expressly changes the Supplier's obligations or liabilities or the Buyer's rights under this Contract, no review, comment or Approval by the Buyer in connection with the whole or any part of the Services and/or the Deliverables and/or the supply of any Goods shall operate to exclude or limit the Supplier's obligations or liabilities or the Buyer's rights under this Contract, and:
 - 3.3.1 the Supplier retains sole responsibility for ensuring that the Services, the Deliverables and the supply of any Goods meet and continue to meet all relevant Specification requirements (as they may be amended from time to time in accordance with this Contract) throughout the Contract Period; and
 - 3.3.2 the Supplier acknowledges and accepts that any review, comment or Approval do not constitute or imply any warranty from the Buyer in respect of the Services, the Deliverables and/or any Goods.

Cooperation with the Supply Chain Integrator

- 3.4 The Supplier acknowledges that the Buyer has appointed the Supply Chain Integrator to manage this Contract (and the Buyer Supply Chain Contracts) on behalf of the Buyer.
- 3.5 Unless otherwise specified by the Buyer, any right or remedy that the Buyer has under this Contract may be enforced by the Supply Chain Integrator on behalf of the Buyer, the Supplier will liaise and cooperate with, and subject to Clause 3.7, accept instructions from the Supply Chain Integrator as if it was the Buyer. For the avoidance of doubt, unless specifically set out in this Contract, the Supplier shall not have any direct liability under this Contract to the Supply Chain Integrator.
- 3.6 The Supply Chain Integrator may, at any time, make direct contact with, and/or provide direct instructions to the Supplier and, subject to Clause 3.7, the Supplier shall liaise directly with the Supply Chain Integrator and comply with any such instructions (insofar as the Supplier is obliged to in accordance with this Contract).
- 3.7 Where any Reserved Matters arise, the Supplier shall liaise directly with the Buyer (via the Reserved Matter Buyer Representative and copying in the Supply Chain Integrator (if specified by the Buyer)) and shall comply with all instructions of the Buyer in connection with the Reserved Matters (insofar as the Supplier is obliged to in accordance with this Contract).
- 3.8 The Buyer may by written notice to the Supplier from time to time amend the list of Reserved Matters for which instructions are required directly from the Buyer rather than the Supply Chain Integrator pursuant to Clause 3.10. Any such change to the list of Reserved Matters shall not, of itself, constitute a Variation nor be subject to the Variation Procedure.
- 3.9 Where the Supplier receives any instruction from the:
- 3.9.1 Supply Chain Integrator that conflicts with any instruction received by the Supplier directly from the Buyer; and/or
 - 3.9.2 Buyer that conflicts with any instruction received by the Supplier from the Supply Chain Integrator,

the Supplier shall promptly notify the Buyer and the Supply Chain Integrator to seek clarification in relation to which instruction it should comply with. The Buyer shall confirm which instruction (or any other instruction as may be relevant) the Supplier should comply with and the Supplier shall do so in accordance with its obligations under this Contract.

Defaults Caused by Buyer Supply Chain Members

- 3.10 Where a Buyer Supply Chain Member default causes, or the Supplier reasonably believes will cause, the Supplier to be in material Default in respect of any of its obligations under this Contract, within five (5) Working Days of any material Default becoming apparent to it the Supplier shall notify the Buyer of such material Default, setting out the details of the Default or likely Default, how such Buyer Supply Chain Member default has caused or will cause the relevant Default and what steps the Supplier has undertaken or will undertake to mitigate the Default. The Buyer may, at the Buyer's cost (but subject always to compliance with this Clause 3.10 and Clauses 3.11 and 3.13), require the Supplier to put such measures in place (including but not

limited to information barriers) as required by the Buyer (acting reasonably) to rectify and/or mitigate the effect of any such material Default.

- 3.11 The Supplier shall at all times:
- 3.11.1 use all reasonable endeavours to mitigate the effects of the Buyer Supply Chain Member default and proactively liaise with the relevant Buyer Supply Chain Member as necessary;
 - 3.11.2 continue to provide the Deliverables in accordance with the requirements of this Contract; and
 - 3.11.3 comply with any reasonable requirements of a Buyer Supply Chain Member.
- 3.12 The Buyer shall, acting reasonably, determine whether and to what extent the Buyer Supply Chain Member default has caused the material Default and shall notify the Supplier of its determination in writing. If there is any Dispute in relation to the effects of such default, either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, such default.
- 3.13 Where it is determined in accordance with Clause 3.12 that the Buyer Supply Chain Member default is not the cause of the relevant Default, the relief set out in Clause 3.14 shall not apply and the Supplier shall be liable for the consequences of such Default in accordance with the terms of this Contract.
- 3.14 Subject to Clause 3.13, where the Buyer determines that the material Default would not have occurred but for a Buyer Supply Chain Member default:
- 3.14.1 the Supplier shall not be treated as being in breach of this Contract to the extent that such Default was caused by the Buyer Supplier Chain Member default; and
 - 3.14.2 the Buyer shall not be entitled to exercise any of the following rights that may arise as a result of the relevant Default to the extent that the Default is caused by the Buyer Supply Chain Member default:
 - (i) to terminate this Contract pursuant to Clause 11 (Ending or Extending this Contract); or
 - (ii) to take action pursuant Clause 10.11.3(ii) (What may happen if there are issues with your provision of the Services).

Buyer Supply Chain Indemnity

- 3.15 The Supplier shall not, and shall ensure that the Supplier Personnel and its Subcontractors do not (due to any Default or breach of duty):
- 3.15.1 cause any impediment, prevention or default to any Buyer Supply Chain Member; and/or
 - 3.15.2 cause or contribute to any breach by the Buyer to breach its obligations to a Buyer Supply Chain Member under the relevant Buyer Supply Chain Contract.

- 3.16 The Supplier shall indemnify the Buyer for all expenses, costs, damages and losses incurred by it arising out of or in connection with Clause 3.15.

Supplier Equipment

- 3.17 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to each of the Buyer Premises, including its off-loading, removal of all packaging. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 3.18 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer or any of its employees, agents or Suppliers or any other person accessing Buyer Premises with the Buyer's consent other than the Supplier or Supplier Personnel.
- 3.19 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Specification.

PPM Plan

- 3.20 From the Effective Date, the Supplier shall update the PPM Plan in accordance with its obligations under this Contract (and no less frequently than monthly) to reflect:
- 3.20.1 any improvements and/or changes identified by the Supplier that will improve the efficiency of the PPM Plan and/or its ability to deliver the Services in accordance with this Contract;
 - 3.20.2 any Routine Variation; and/or
 - 3.20.3 any Variation.

Supply of Goods

- 3.21 Where, as part of the Services, the Supplier is to provide Goods:
- 3.21.1 the prices shall be calculated in accordance with Call-Off Schedule 5 (*Pricing*);
 - 3.21.2 the Supplier shall supply and, where relevant, install, alter or calibrate the Goods in accordance with the relevant provisions of the Buyer's Requirements or such other specifications agreed by the Parties;
 - 3.21.3 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship during the Contract Period;
 - 3.21.4 if following inspection or testing the Buyer reasonably considers that the Goods do not materially conform with the relevant provisions of the Buyer's Requirements or any other agreed specification or are otherwise unfit for

purpose, the Buyer shall inform the Supplier and the Supplier shall promptly take such remedial action as is necessary to ensure compliance; and

3.21.5 without prejudice to any other rights or remedies of the Buyer:

- (i) risk in the Goods shall pass to the Buyer at the time of delivery; and
- (ii) ownership of the Goods shall pass to the Buyer at the time of delivery or payment (whichever is earlier).

Collateral Warranty Agreements

3.22 When requested by the Buyer following a request from a third party with a proprietary interest in any of the Buyer Premises, the Supplier shall provide collateral warranties from both it and any Key Subcontractor in favour of any such third party in accordance with Call-Off Schedule 19 (Collateral Warranty Agreements).

Small and Medium Sized Enterprises ("SMEs")

- 3.23 The Supplier shall take all reasonable steps to engage SMEs as Subcontractors and use reasonable endeavours to ensure that no less than 33 percent of the Subcontractors are SMEs ("SME Percentage") are SMEs or that a similar proportion of the Deliverables of the service is undertaken by SMEs
- 3.24 The Supplier shall report to the Buyer on the number of SMEs which it appoints as Subcontractors and the value of the cost of the Deliverables undertaken by those SMEs within its normal reporting procedures.

Replacement Equipment

- 3.25 All Replacement Equipment delivered must be new, or (with the Buyer's written approval at its sole discretion) as new if recycled, reconstructed, unused and of recent origin.
- 3.26 All manufacturer warranties covering the Replacement Equipment must be assignable to the Buyer on request and at no cost.
- 3.27 Unless otherwise required in the Contract or from time to time by the Buyer, title of the Replacement Equipment shall transfer to the Buyer on completion of the Installation Works requiring the Replacement Equipment.
- 3.28 Unless otherwise agreed by the Buyer in writing the risk in any Replacement Equipment shall remain with the Supplier during the Contract Period.
- 3.29 The Supplier warrants that title in any Replacement Equipment is capable of transferring to the Buyer in accordance with the provisions of Clauses 3.25 to 3.32.
- 3.30 The Supplier must recall Replacement Equipment where the manufacturer has requested a recall and indemnify the Buyer against the costs of any Recall of the Replacement Equipment and give notice of actual or anticipated action about the Recall of the Replacement Equipment.
- 3.31 The Replacement Equipment must comply with the Specification, the remainder of this Contract and any additional requirements agreed between the Supplier and the Buyer from time to time.

- 3.32 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Replacement Equipment that the Buyer rejects because it does not conform to these Clauses 3.25 to 3.32. If the Supplier does not do this, it will pay the Buyer's costs including repair, replacement or re-supply by a third party.

Materials

- 3.33 The Supplier warrants to the Beneficiary that it has not specified or approved for use or used and will not specify or approve for use or use in connection with the Deliverables any materials which at the time of specification or use (as the case may be):
- 3.33.1 are known to be deleterious when used in the manner in which they are to be used (either to health and safety or to the durability of the Deliverables);
 - 3.33.2 contravene any relevant standard or code of practice issued from time to time by the BSI Group or under a European directive relating to standards or good building practice; or
 - 3.33.3 do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of specification or use.

4 Pricing and payments

Charges and invoicing

- 4.1 In exchange for the provision of the Services and the Deliverables (including the supply of any Goods), the Supplier must invoice the Buyer for the Charges in accordance with Call-Off Schedule 5 (*Pricing*).
- 4.2 If there is a Dispute between the Parties as to the amount invoiced by the Supplier to the Buyer, the Buyer must pay the undisputed amount. Any disputed amounts shall be resolved through the Dispute Resolution Procedure.
- 4.3 If a payment of an undisputed amount is not made by the Buyer by the final date for payment, then the Buyer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 The Supplier can issue a written Reminder Notice to the Buyer (in accordance with Clauses 26.1 and 26.2 (How to communicate about this Contract) if the Buyer does not pay an undisputed invoice on time.
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment. The Supplier must also ensure that any Sub-Contract it enters into contains provisions which have the same effect as those set out in Call-Off Schedule 5 (*Pricing*).
- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless a court orders this.

Suspension

- 4.8 The Supplier may suspend the provision of construction works under S112 of the Construction Act by giving at least seven days' notice (excluding bank holidays) of non-payment stating the grounds relied upon to suspend performance if the Buyer has:
- 4.8.1 issued a Pay Less Notice and failed to pay the amount specified in the Pay Less Notice by the final date for payment; or
 - 4.8.2 where no Pay Less Notice has been issued the Buyer has failed to pay the amount specified in an invoice by the final date for payment.
- 4.9 If the Supplier suspends performance in accordance with Clause 4.8, the Supplier shall, within 5 days of receipt of payment in full (which shall be deemed to have been made when in the ordinary course of the method of delivery, payment would have been received), recommence performance of its obligations under this Contract.
- 4.10 If the Supplier suspends performance in accordance with Clause 4.8 and this shall be deemed to be a Buyer Cause, the extension of time for any Supplier Non-Performance shall be the period from the date on which performance was suspended in accordance with Clause 4.8 to the earlier of:
- 4.10.1 the date on which, following payment in full, the Supplier recommences performance of its obligations under this Contract (after allowing for a reasonable period of re-mobilisation); and
 - 4.10.2 the expiry of the 5 day period referred to in Clause 4.9 (together with a reasonable period for remobilisation).

5 The Buyer's obligations to the Supplier

- 5.1 If Supplier Non-Performance directly arises from Buyer Cause:
- 5.1.1 the Supplier shall not be treated as being in breach of this Contract to the extent that such Default was caused by the Buyer Cause; and
 - 5.1.2 the Buyer shall not be entitled to exercise any of the following rights that may arise as a result of the relevant Default to the extent that the Default is directly caused by the Buyer Cause:
 - (i) to terminate this Contract pursuant to Clause 11 (Ending of terminating this Contract); or
 - (ii) to take action pursuant Clause 10.11.3(ii) (What may happen if there are issues with your provision of the Services).
- 5.2 Clause 5.1 only applies if the Supplier:
- 5.2.1 gives notice to the Buyer in accordance with Clause 10 (What may happen if there are issues with your provision of the Services);
 - 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
 - 5.2.3 mitigated the impact of the Buyer Cause.

- 5.3 If the Supplier fails to Complete a PPM Task and/or any item of Remedial Work by the relevant date set out in the PPM Plan and/or within the relevant Remedial Work Completion Period and such failure is due to the occurrence of a Permitted Event, the Buyer shall not take this into account when determining each relevant KPI Credit.

6 Record keeping and reporting

- 6.1 The Supplier shall monitor and report (in a Performance Monitoring Report) its performance of the Services and the provision of the Deliverables in accordance with Call-Off Schedule 14 (Key Performance Indicators) and the Parties agree that the provisions of such Call-Off Schedule 14 (Key Performance Indicators) shall apply to determine (amongst other things) the process following (and the outcome of) such monitoring and reporting (including in relation to the carrying out of the Performance Review Meeting and the requirement for and consequences of any Rectification Plan).
- 6.2 The Supplier must attend Performance Review Meetings with the Buyer and provide Performance Monitoring Reports in accordance with Call-Off Schedule 14 (Key Performance Indicators).
- 6.3 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the End Date.
- 6.4 The Supplier must allow, and must ensure that any Key Subcontractor allows, any Auditor access to the Supplier's or Key Subcontractor's premises and/or systems (including IT systems), as relevant, to Audit everything to do with this Contract.
- 6.5 The Supplier must provide, and must ensure that any Key Subcontractor provides, information to the Auditor and reasonable co-operation at the Auditor's request to enable any Audit to be undertaken.

Key Performance Indicators

- 6.6 From the Start Date, the Supplier shall:
- 6.6.1 provide the Services and the Deliverables in such a manner so as to meet or exceed the KPI Performance Measure for each KPI; and
 - 6.6.2 comply with the provisions of Call-Off Schedule 14 (Key Performance Indicators) in relation to the monitoring and reporting on its performance against the KPIs.
- 6.7 If after the Start Date a Persistent KPI Failure occurs, this shall be deemed to be a Supplier Termination Event.

7 Supplier Staff and Subcontracting

Supplier Staff

- 7.1 The Parties agree that, at the Effective Date, TUPE and the Cabinet Office Statement shall apply to transfer the employment of any employees of the Buyer or a Third Party to the Supplier and the provisions of Call-Off Schedule 2 (Staff Transfer) shall apply.
- 7.2 The Supplier Staff involved in the performance of this Contract must:
- 7.2.1 be appropriately trained and qualified;

- 7.2.2 be vetted using Good Industry Practice and the Security Policy; and
- 7.2.3 comply with all requirements of the Buyer when on the Buyer's Premises.
- 7.3 If any default, acts, omissions, negligence and/or statements of any of the Supplier Staff involved in the performance of this Contract result in a Default, the Supplier is liable to the Buyer for that Default.
- 7.4 Where the Buyer decides (on reasonable grounds) that one of the Supplier's Staff is not suitable to work on this Contract, the Supplier must, subject to Clause 7.2, promptly replace them with a suitably qualified alternative.
- 7.5 If requested by the Buyer, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 28 (Preventing fraud, bribery and corruption).
- 7.6 The Supplier must provide a list of Supplier Staff needing to access any of the Buyer's Premises and say why such access is required.
- 7.7 The Supplier shall indemnify and keep the Buyer indemnified in full from and against all Losses suffered or incurred by the Buyer arising out of or in connection with any claim brought by any person employed or engaged by the Supplier and/or any Subcontractor caused by any act or omission of the Supplier and/or any Supplier Staff.

Subcontracting

- 7.8 The Supplier shall comply with the provisions of Joint Schedule 6 (Key Subcontractors) in respect of the appointment (including any proposed appointment) and/or management of any Subcontractor (including any Key Subcontractor).
- 7.9 Sub-contracting any part of this Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under this Contract.

8 Rights and protection

- 8.1 The Supplier warrants and represents that:
 - 8.1.1 it has full capacity and authority to enter into and to perform this Contract;
 - 8.1.2 this Contract is executed by its authorised representative;
 - 8.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
 - 8.1.4 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 this Contract;
 - 8.1.5 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;
 - 8.1.6 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
 - 8.1.7 it is not subject to an Insolvency Event;

- 8.1.8 it will comply with this Contract; and
- 8.1.9 all statements made, and documents submitted, as part of the procurement of the Services and the Deliverables are true and accurate.
- 8.2 The warranties and representations in Clause 8.1 are repeated each time the Supplier provides the Services, the Deliverables and/or supplies any Goods under this Contract.
- 8.3 The Supplier shall indemnify and keep the Buyer indemnified in full from and against all Losses suffered or incurred by the Buyer arising out of or in connection with:
 - 8.3.1 the wilful misconduct and/or gross negligence of the Supplier, any Subcontractor and/or any Supplier Staff;
 - 8.3.2 third party claims that result from the provision of the Services including the supply of any Goods; and
 - 8.3.3 non-payment by the Supplier of any tax or National Insurance.
- 8.4 All claims indemnified under this Contract (including for the avoidance of doubt any indemnified IPR Claim) must use the process set out in Clause 27 (*Dealing with claims*).
- 8.5 The Buyer can, even if it has made a claim in respect of the breach, still terminate this Contract for breach of any warranty or indemnity where it is entitled to do so.
- 8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 8.7 The Supplier must ensure that all third party warranties and indemnities covering the Services and the Deliverables (including the supply of any Goods) must be assigned to the Buyer for the Buyer's benefit.

9 Intellectual Property Rights

- 9.1 Each Party shall retain ownership of its Existing IPR.
- 9.2 The Supplier shall grant to the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence to use, change and sub-license the Existing IPR of the Supplier to enable the Buyer to both:
 - 9.2.1 receive and make use of the Services and the Deliverables (including any Goods); and
 - 9.2.2 receive and make use of Replacement Services provided by a Replacement Supplier.
- 9.3 Any New IPR created under this Contract is owned by the Buyer.
- 9.4 The Buyer shall grant the Supplier a licence to use any Existing IPRs and any New IPRs for the purpose of fulfilling its obligations under this Contract during the Contract Period.
- 9.5 Where a Party acquires ownership of IPR incorrectly under this Contract, it shall do everything reasonably necessary to complete a transfer assigning such IPR to the other Party on request and at the cost of the transferring Party.

- 9.6 Save as expressly set out in this Clause 9 or otherwise agreed in writing between the Parties, no Party shall have the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks.
- 9.7 If there is an IPR Claim, the Supplier shall indemnify and keep indemnified the Buyer from and against all Losses suffered or incurred by the Buyer arising out of or in connection with such IPR Claim.
- 9.8 If an IPR Claim is made or anticipated, the Supplier shall at its own expense and at the Buyer's sole option, either:
 - 9.8.1 obtain for the Buyer the rights in Clauses 9.1 to 9.4 without infringing any third party IPR; or
 - 9.8.2 replace or modify the whole or part of the Services, the Deliverable and/or any Goods (without adversely affecting the functionality or performance of such whole or part of the Services, the Deliverables and/or such relevant Goods) so that such whole or part of the Services, the Deliverables (and/or such relevant Goods) does not infringe any third party IPR.

10 What may happen if there are issues with your provision of the Services

- 10.1 The Supplier shall notify the Buyer's Authorised Representative promptly in writing if:
 - 10.1.1 it becomes aware of any actual or anticipated Persistent Buyer Cause;
 - 10.1.2 it becomes aware of any actual or anticipated Permitted Event that will affect the Supplier's ability to provide the Deliverables;
 - 10.1.3 it becomes aware of any actual or anticipated Persistent KPI Failure and/or Critical Failure Event;
 - 10.1.4 it makes any changes to its management, governance, organisational and/or operational structure or capacity which shall or may be material to the provision of the Services, the Deliverables and/or the supply of any Goods;
 - 10.1.5 it becomes aware of any circumstances relating to the Supplier or any Subcontractor which shall or may bring into disrepute and/or diminish the trust that the public places in the Buyer and/or the carrying out of the Services or the provision of the Deliverables (including any Conflict of Interest (as contemplated by Clause 33 (*Conflict of interest*)));
 - 10.1.6 it becomes aware of any issue which shall or may have an adverse impact on the provision of the Deliverables; and/or
 - 10.1.7 the Supplier is under investigation and/or subject to regulatory enforcement by any relevant Buyer and such investigation and/or enforcement shall or may be material to the Supplier's ability to provide the Deliverables,

each an "**Identified Risk**" occurs.
- 10.2 Without prejudice to Rectification Plan Process, each of the Supplier and the Buyer shall pro-actively manage risks attributed to them under the terms of this Contract and they shall on a monthly basis as a minimum, unless agreed otherwise in writing, attend

a meeting, which for the purpose of this Clause 10.2 may include a Performance Review Meeting, to:

- 10.2.1 discuss the occurrence of any of the Identified Risk and the evidence provided;
- 10.2.2 consider proposals for how the anticipated effect of the Identified Risk could be avoided or mitigated;
- 10.2.3 consider and agree actions and who will take them; and
- 10.2.4 consider and agree any amendments to be made to the Risk Management Plan in response to the Identified Risk and/or the agreed actions,

and within a reasonable time following the first such meeting, the Supplier shall prepare the first risk management plan (the "**Risk Management Plan**"), and following each subsequent meeting, the Supplier shall update the Risk Management Plan to record the decisions made by the Supplier and the Buyer at the meeting and provide copies to both the Supplier and the Buyer. If a decision necessitates a change to the Deliverables, then the Variation Control Procedure shall be applied by the Parties.

Notification

- 10.3 In the event that the Supplier commits a Notifiable Default, the Supplier shall notify the Buyer of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default.

- 10.4 If:

- 10.4.1 the Supplier notifies the Buyer pursuant to Clause 10.3 that a Notifiable Default has occurred; or
- 10.4.2 the Buyer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, (without prejudice to the Buyer's right to step in under Clause 10.11.3(ii)) unless the Notifiable Default also constitutes a Supplier Termination Event and the Buyer serves a Termination Notice, the parties shall comply with the Rectification Plan Process. A failure by the Supplier to comply with the Rectification Plan Process or to implement an agreed Rectification Plan in accordance with such agreed plan, shall entitle the Buyer to step-in pursuant to Clause 10.11.3(ii).

- 10.5 The "**Rectification Plan Process**" shall be as set out in Clauses 10.6 to 10.7.

Submission of the draft Rectification Plan

- 10.6 The Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 10.4. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

- 10.7 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer reasonably requires. If the Parties do not agree on the draft Rectification Plan, either Party may refer the matter to the Dispute Resolution Procedure.

Agreement of the Rectification Plan

- 10.8 The Buyer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- 10.8.1 is insufficiently detailed to be capable of proper evaluation;
- 10.8.2 will take too long to complete;
- 10.8.3 will not prevent recurrence of the Notifiable Default; and/or
- 10.8.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Buyer.

- 10.9 The Buyer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Buyer rejects the draft Rectification Plan, the Buyer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. Without prejudice to the Buyer's right to step in under Clause 10.11.3(ii), the Supplier shall submit the revised draft of the Rectification Plan to the Buyer for review within 5 Working Days (or such other period as agreed between the Parties) of the Buyer's notice rejecting the first draft.

- 10.10 If the Buyer consents to the Rectification Plan:

- 10.10.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- 10.10.2 the Buyer may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default provided that the Supplier complies with its obligations under the Rectification Plan.

Remedies

- 10.11 Without prejudice to any other right or remedy of the Buyer howsoever arising and subject to the exclusive financial remedy provisions in Call-Off Schedule 14 (Key Performance Indicators), if the Supplier commits any Default of this Contract then the Buyer may (whether or not any part of the Deliverables have been Delivered) do any of the following:

- 10.11.1 at the Buyer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Deliverables and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Buyer's instructions;
- 10.11.2 where the option to remedy has been provided but the Supplier failed to remedy the Default by the reasonable period specified by the Buyer, the Buyer may:

- (i) itself carry out, at the Supplier's expense, any work necessary to make the provision of the Deliverables comply with this Contract, and the Buyer shall be entitled to recover any internal and/or external management costs associated with steps taken by or on behalf of the Buyer pursuant to this Clause 10.11.2; or
- (ii) where such Default relates to a Deliverable that the Supplier has failed to Complete, the Supplier shall on demand pay or allow the sum of:
 - (A) £250 (exclusive of VAT, to the extent applicable) for each relevant PPM Task; and/or
 - (B) £250 (exclusive of VAT, to the extent applicable) for each relevant item of Remedial Work,

which the Supplier has failed to Complete notwithstanding that the Buyer has given the Supplier the option to remedy; and

10.11.3 if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a Critical Failure Event, a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):

- (i) instruct the Supplier to comply with the Rectification Plan Process; or
- (ii) step-in itself to supply or procure a third party to supply (in whole or in part), the Deliverables and/or suspend (for any period) all or part of the provision of the Deliverables.

10.12 Where the Buyer exercises any of its rights under Clause 10.11.3(ii):

10.12.1 the Buyer shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs, losses and/or expenses reasonably incurred by the Buyer (including any reasonable administration costs) in respect of:

- (i) managing and implementing the step-in process and/or suspension;
- (ii) the supply of any part of the Deliverables by the Buyer or a third party; and
- (iii) any additional expenditure in obtaining Replacement Deliverables;

10.12.2 the Supplier shall not be obliged to provide the Deliverables to the extent that they are subject to a step-in and/or a suspension; and

10.12.3 any actions and any events in relation to the Buyer taking steps under Clause 10.11.3(ii) shall not be deemed to be a Buyer Cause.

11 Ending or extending this Contract

11.1 This Contract ends on the End Date.

Extending this Contract

- 11.2 The Buyer can extend this Contract for the Optional Extension Period by giving the Supplier no less than 3 months written notice prior to the relevant Expiry Date. More than one notice can be issued.
- 11.3 Any notice issued by the Buyer pursuant to Clause 11.2 shall specify which part or parts of the Deliverables the Buyer requires the Supplier to provide during the Optional Extension Period.
- 11.4 Where the Buyer chooses to omit any part or parts of the Deliverables for the Optional Extension Period:
 - 11.4.1 the Supplier shall cease to provide the relevant Deliverables from the commencement of the Optional Extension Period;
 - 11.4.2 the Supplier shall be required to deliver or provide the remaining Deliverables during the Optional Extension Period;
 - 11.4.3 the effects of omitting any part or parts of the Deliverables shall be determined in accordance with the Variation Control Procedure or such other procedure as the Parties may agree; and
 - 11.4.4 the provisions of Call-Off Schedule 10 (Exit Management) shall apply to any Deliverables that are omitted under this Clause 11.4.

When the Buyer can end this Contract

- 11.5 If a Supplier Termination Event occurs, the Buyer has the right to immediately terminate the whole or the relevant part of this Contract by issuing a Termination Notice to the Supplier. Where a termination notice relates to part of this Contract, the provisions of Clause 11.7 shall be construed accordingly.
- 11.6 The Buyer has the right to terminate the whole or the relevant part of this Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice. Where a termination notice relates to part of this Contract, the provisions of Clause 11.7 shall be construed accordingly.

What happens if this Contract ends

- 11.7 Where the Buyer terminates this Contract pursuant to Clauses 11.5 or 11.6, all of the following apply:
 - 11.7.1 the Supplier shall indemnify and keep the Buyer indemnified in full from and against the Buyer's reasonable costs of procuring (and any additional costs in the performance of) the Replacement Services for the remainder of Contract Period save that this Clause 11.7.1 shall not apply in the event that the Buyer terminates this Contract pursuant to Clause 11.6;
 - 11.7.2 the Buyer's payment obligations under this Contract end immediately;
 - 11.7.3 the accumulated rights of the Buyer are not affected;
 - 11.7.4 the Supplier must promptly return (or, where required by the Buyer, delete) the Government Data except where required to retain copies by Law;

- 11.7.5 the Supplier must promptly return any of the Buyer's property provided to it under this Contract;
- 11.7.6 the Supplier must at no cost to the Buyer co-operate fully in the re-procurement and/or handover of the Services (including to a Replacement Supplier);
- 11.7.7 the Supplier must comply with the relevant provisions of Call-Off Schedule 10 (Exit Management); and
- 11.7.8 this Clause 11.7 and the following clauses survive the termination of this Contract: Clauses 5, 7.2, 8.3, 9, 12, 15, 16, 17, 18, 19, 35 and 36 and any Clauses and/or Schedules which are expressly or by implication intended to continue.

When the Supplier can end this Contract

- 11.8 The Supplier can terminate this Contract by issuing a Termination Notice if the Buyer fails to pay any undisputed Charges which have fallen due under this Contract and which are directly payable by the Buyer within 60 days of the date of a Reminder Notice issued by the Supplier in respect of such sum.
- 11.9 If the Supplier terminates this Contract under Clause 11.8:
 - 11.9.1 the Buyer must promptly pay all outstanding Charges referred to in Clause 11.8 to the Supplier; and
 - 11.9.2 Clauses 11.7.3 to 11.7.8 shall apply.

When Sub-Contracts can be ended

- 11.10 At the Buyer's request, the Supplier must terminate (or procure the termination of (as the case may be)) any Sub-Contracts in any of the following events:
 - 11.10.1 there is a Change of Control of the relevant Subcontractor which is not pre-approved in writing by the Buyer;
 - 11.10.2 the acts or omissions of the relevant Subcontractor have caused or materially contributed to a right of the Buyer to terminate this Contract;
 - 11.10.3 a Supplier Termination Event is caused or contributed to by the relevant Subcontractor or where any analogous events referred to in limbs (b), (d), (e), (f), (g), (h), (j) or (l) of the definition of Supplier Termination Event occurs in respect of the Subcontractor;
 - 11.10.4 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
 - 11.10.5 the relevant Subcontractor sub-contracts any of its obligations in relation to the Services in breach of the requirements of this Contract.

Payments due on Termination under Clause 11.6

- 11.11 Upon termination of the Contract by the Buyer in accordance with Clause 11.6, the amount that is due for payment will be as set out below:

- 11.11.1 the Charges for Deliverables which have been properly provided by the Supplier in accordance with the terms of the Contract;
- 11.11.2 any reasonable and proven direct costs incurred by the Supplier for removing Supplier Equipment and/or demobilising; and
- 11.11.3 any other costs, losses and/or expenses reasonably incurred in expectation of completing the whole of the Services and any amounts retained by the Supplier,

provided that such amounts shall only be recoverable if and to the extent that the Supplier has used all reasonable endeavours to minimise them.

12 How much each Party can be held responsible for

12.1 Subject to the following provisions of this Clause 12, each Party's total aggregate liability under this Contract (whether in tort, contract or otherwise) for each claim or series of connected claims is no more than 150% of the Charges payable over the Contract Period.

12.2 No Party is liable to the other for:

12.2.1 any indirect, special or consequential Loss; or

12.2.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect), provided always that, subject to Clause 12.1, the Supplier acknowledges that the Buyer may, amongst other things, recover from the Supplier the following Losses incurred by the Buyer to the extent that they arise as a result of a Default by the Supplier:

- (i) any additional operational and/or administrative costs and expenses, including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default;
- (ii) any wasted expenditure or charges;
- (iii) the additional cost of procuring Replacement Services for the remainder of the Contract Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- (iv) any costs, expenses, losses, compensation or interest paid to a third party by the Buyer; and
- (v) any fine or penalty pursuant to Law and any costs in defending any proceedings which result in such fine or penalty.

12.3 Nothing in this Contract shall operate to exclude or limit the liability of either Party in relation to the following:

12.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

12.3.2 bribery or fraud or fraudulent misrepresentation by it or its employees; or

- 12.3.3 any liability that cannot be excluded or limited by Law.
- 12.4 The limitation of liability set out in Clause 12.1 does not limit or exclude the liability of the Supplier for any indemnity given under Clauses 3.16, 7.7, 8.3, 9.7, 13.1, 15.9.5, 32.2.2 or under Call-Off Schedule 2 (*Staff Transfer*), Call-Off Schedule 10 (*Exit Management*) and/or any Deductions and is exclusive of VAT where payable.
- 12.5 Each Party must use its reasonable endeavours to mitigate any Losses which it suffers under or in connection with this Contract, including where any such Losses are covered by an indemnity.
- 12.6 When calculating the Supplier's liability under Clause 12.1 (and without prejudice to Clause 12.4), Losses covered by Required Insurances will not be taken into consideration.
- 13 Obeying the Law**
- 13.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (*Corporate Social Responsibility*).
- 13.2 The Supplier shall indemnify and keep the Buyer indemnified in full from and against all Losses resulting from any Default by the Supplier relating to any applicable Law to do with this Contract.
- 14 Insurance**
- 14.1 The Supplier shall at its own cost, obtain and maintain the Required Insurances and in accordance with Joint Schedule 3 (*Insurance Requirements*).
- 14.2 The Supplier shall ensure that each of the Required Insurances is effective no later than the date on which the relevant risk commences.
- 15 Data protection and information**
- 15.1 Each Party shall comply with the Data Protection Legislation and their respective obligations set out in Call-Off Schedule 11 (*Personal Data*).
- 15.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (*Processing Data*).
- 15.3 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 15.4 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send to the Buyer copies every 6 Months.
- 15.5 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 Policy.
- 15.6 If at any time the Supplier suspects or has reason to believe that the Government Data provided or generated under this Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 15.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable, the Buyer may either or both:

- 15.7.1 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
- 15.7.2 restore the Government Data itself or using a third party.
- 15.8 The Supplier must pay each Party's reasonable costs of complying with Clause 15.7 unless the Buyer is at fault.
- 15.9 The Supplier:
 - 15.9.1 must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
 - 15.9.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - 15.9.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - 15.9.4 must 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
 - 15.9.5 indemnifies the Buyer against any and all Losses suffered or incurred by the Buyer if the Supplier breaches this Clause 15 and/or any Data Protection Legislation.

16 What you must keep confidential

Confidential Information

- 16.1 Each Party must, subject to the following provisions of this Clause 16;
 - 16.1.1 keep all Confidential Information it receives confidential and secure;
 - 16.1.2 not disclose, use or exploit the Confidential Information disclosed by the Disclosing Party without the Disclosing Party's prior written consent, except for the purposes anticipated under this Contract; and
 - 16.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 16.2 Notwithstanding Clause 16.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
 - 16.2.1 where disclosure is required by applicable Law or by a court with the required jurisdiction, if the Recipient Party (to the extent that it is permitted to do so by such applicable Law or by such court) notifies the Disclosing Party in advance of disclosure of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 16.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed to it by the Disclosing Party;

- 16.2.3 if the information was given to it by a third party without obligation of confidentiality;
 - 16.2.4 if the information was in the public domain at the time of the disclosure;
 - 16.2.5 if the information was independently developed without access to the Confidential Information of the Disclosing Party;
 - 16.2.6 to its auditors or for the purposes of regulatory requirements;
 - 16.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and/or
 - 16.2.8 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 this Contract. The Supplier must ensure that the Supplier Staff enter into a direct confidentiality agreement with the Buyer at the Buyer's request.
- 16.4 The Buyer may disclose Confidential Information in any of the following cases:
- 16.4.1 on a confidential basis to the employees, agents, consultants and Suppliers of the Buyer;
 - 16.4.2 on a confidential basis to any Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - 16.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 16.4.4 where requested by Parliament;
 - 16.4.5 under Clauses 4.6 (*Pricing and payments*) and 17 (*When you can share information*); or
 - 16.4.6 save for Exit Information, where the information was generated as part of the provision of the Services.
- 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 this Clause 16.

Transparency Information and other disclosures

- 16.6 Transparency Information and any information which is exempt from disclosure by Clause 17 (*When you can share information*) is not Confidential Information.
- 16.7 The Supplier must not make any press announcement or publicise this Contract or the output of the Services without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

17 When you can share information

17.1 The Supplier acknowledges that:

17.1.1 the Transparency Reports; and

17.1.2 the content of this Contract, including any changes to this Contract agreed during the Contract Period,

except for (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (ii) Commercially Sensitive Information (together the “**Transparency Information**”) is not Confidential Information.

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

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

17.3.1 publish the Transparency Information; and

17.3.2 comply with any Request for Information.

17.4 The Buyer 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 Buyer’s decision, which does not need to be reasonable.

17.5 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose information (including Confidential Information and Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. However, to the extent that it is permitted to do so (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA), the Buyer shall, in relation to any Request for Information relating to Confidential Information or Commercially Sensitive Information of the Supplier:

17.5.1 notify the Supplier of such Request for Information as soon as is reasonably practicable; and

17.5.2 allow the Supplier to make representations in relation to any exemptions the Supplier considers may apply to the disclosure of its information under the Request for Information and take such representations into account when making its decision of what it will disclose.

17.6 Notwithstanding any other provision in this Contract, the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

18 Invalid parts of this Contract

If any part of this Contract is held to be void or otherwise unenforceable by any court of competent jurisdiction, such part shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be

deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.

19 No other terms apply

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

20 Other people's rights in this Contract

No third parties shall be entitled to enforce any term of this Contract.

21 Circumstances beyond either Party's control

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

21.1.1 provides a Force Majeure Notice to the other Party; and

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

21.2 The Buyer can terminate this Contract if the provision of the Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.

21.3 Where the Buyer terminates under Clause 21.2:

21.3.1 each Party must cover its own Losses; and

21.3.2 subject to Clause 21.3.1, Clauses 11.7.2 to 11.7.7 apply.

21.4 Neither Party can rely on Clause 21.1 where the inability to perform its obligations arises, directly or indirectly, due to the exit from the European Union by the United Kingdom.

21.5 The Supplier may not rely on Clause 21.1 to the extent that the inability to perform its obligations arises directly or indirectly out of a failure by the Supplier to comply with its Business Continuity Plan.

22 Relationships created by this Contract

22.1 This Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent itself accordingly and ensure the Supplier Staff do so.

23 Giving up contract rights

23.1 No acknowledgement, admission, advice, approval (save where expressly provided for in this Contract), comment, enquiry, indication of satisfaction, inspection, instruction (save where expressly provided for in this Contract) or anything similar, given or made by or on behalf of the Buyer or the Buyer's Authorised Representative shall exclude, limit, modify, qualify or reduce the Supplier's obligations or liability under this Contract.

23.2 Any delay, forbearance, indulgence or relaxation ("**Indulgence**") of a Party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor

shall any Indulgence constitute a waiver of any other right, whether against that Party or any other person.

- 23.3 The Supplier agrees that receipt by or on behalf of the Buyer of any document and/or information provided and/or Uploaded by or on behalf of the Supplier shall not be deemed to be Approved, save where expressly provided for in this Contract.

24 Transferring responsibilities

- 24.1 The Supplier must not assign, transfer or otherwise dispose of its rights, obligations and/or liabilities under the whole or any part of this Contract without Approval.
- 24.2 The Buyer can assign, novate or transfer this Contract or any part of it to any Crown Body, public sector body or private sector body which performs the functions of the Buyer and/or any facilities management services provider.
- 24.3 The Supplier must enter into a novation agreement in the form that the Buyer specifies where the Buyer wishes to exercise its rights under Clause 24.2.
- 24.4 The Supplier can terminate this Contract novated under Clause 24.2 to a private sector body where an Insolvency Event occurs in respect of that private sector body.
- 24.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

25 Changing this Contract

Variations

- 25.1 Either Party can request a Variation to this Contract.
- 25.2 The Supplier cannot unreasonably withhold or delay its consent to a Variation to this Contract.
- 25.3 Except as expressly set out in this Contract, any requirement for a Variation shall be subject to the provisions set out in Joint Schedule 2 (*Variation Control Procedure*).
- 25.4 Save in relation to any Routine Variation, a Variation of this Contract is only effective if agreed in writing and signed by both Parties.

Change in Law

- 25.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges in respect of that change.
- 25.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period, the Supplier must give the Buyer notice of the likely effects of the Specific Change in Law as soon as reasonably practical. The Supplier must also say if it thinks any Variation is needed either to the Deliverables and/or this Contract and provide evidence:
- 25.6.1 that the Supplier has kept costs as low as possible and/or maximised any cost savings (as the case may be) including any Subcontractor costs; and
- 25.6.2 of how it has affected or will affect the Supplier's costs and/or those of any Subcontractor.

- 25.7 Any Variation because of a Specific Change in Law must be implemented using Joint Schedule 2 (*Variation Control Procedure*).

26 How to communicate about this Contract

- 26.1 All notices under this Contract must be in writing and are considered effective on the Working Day of delivery as long as delivered before 5:00 pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is not effective notice unless also sent by post or delivered by hand on the same day.
- 26.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address and notices to the Supplier must be sent to the Supplier Authorised Representative's address or email address. Notices shall be sent to the addresses set out below or at such other address as the relevant Part may give notice to the other Party for the purpose of services of notices under this Contract.

	Supplier	Buyer (for notices other than Termination Notice, legal proceedings or any documents in any legal action)	Buyer (for Termination Notice, legal proceedings or any documents in any legal action)
Contact	The Company Secretary	Sam Birch FM Category Lead Department for Work and Pensions	Jerry Scott
Address	Level 12 The Shard 32 London Bridge Street London SE1 9SG	5th Floor 2 St Peters Square Manchester M2 3AA	Department for Work and Pensions Caxton House Tothill Street London SW1H 9NA
Email	thecompanysecretary@mtiie.com	SAM.BIRCH@DWP.GOV.UK	No email service permitted, unless agreed in writing by the Buyer

27 Dealing with claims

- 27.1 If a Beneficiary is notified of or otherwise becomes aware of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days after such notification or date of first awareness.
- 27.2 At the Indemnifier's cost the Beneficiary must both:
- 27.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim;
- 27.2.2 give the Indemnifier reasonable assistance with the Claim if requested.
- 27.3 The Beneficiary must not make admissions about the Claim or enter into any agreement or compromise in relation to the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 27.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

- 27.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 27.6 The Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
- 27.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the relevant Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
- 27.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
 - 27.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

28 Preventing fraud, bribery and corruption

- 28.1 The Supplier must not during the Contract Period:
- 28.1.1 commit a Prohibited Act or any other criminal offence in regulations 57(1) and 57(2) and/or 57(3) of the Regulations; and/or
 - 28.1.2 do or allow anything which would cause the Buyer, including any of its employees, consultants, Suppliers, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 28.2 The Supplier must during the Contract Period:
- 28.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
 - 28.2.2 keep full records to show it has complied with its obligations under this Clause 28 and give copies to the Buyer on request; and
 - 28.2.3 if required by the Buyer, within 20 Working Days of the Start Date, and then annually, certify in writing to the Buyer, that it has complied with this Clause 28, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 28.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 28.1 or 28.2, or has any reason to think that it, or any of the Supplier Staff, has either:
- 28.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 28.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any Crown Body;
 - 28.3.3 received a request or demand for any undue financial or other advantage of any kind related to this Contract; or
 - 28.3.4 suspected that any person or Party directly or indirectly related to this Contract has committed or attempted to commit a Prohibited Act.

- 28.4 If the Supplier notifies the Buyer as required by Clause 28.3, the Supplier must respond promptly to the Buyer's further enquiries, co-operate with any investigation and allow the Audit of any relevant books, records and documentation.
- 28.5 In any notice the Supplier gives under Clause 28.4 it must specify the:
- 28.5.1 Prohibited Act;
 - 28.5.2 identity of the party who it thinks has committed the Prohibited Act; and
 - 28.5.3 action it has decided to take.

29 Equality, diversity, human rights and modern slavery

- 29.1 The Supplier must follow all applicable equality Law when it performs its obligations under this Contract, including:
- 29.1.1 protection against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 29.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 29.2 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.
- 29.3 The Supplier must ensure that there is no slavery or human trafficking in its supply chains and must notify the Buyer immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains.
- 29.4 The Supplier must at all times conduct its business in a manner that is consistent with any modern slavery policy of the Buyer and shall provide to the Buyer any reports or other information that the Buyer may request as evidence of the Supplier's compliance with this Clause 29.4 and/or as may be requested or otherwise required by the Buyer in accordance with any Buyer modern slavery policy.

30 Health and safety

- 30.1 The Supplier must perform its obligations meeting the requirements of:
- 30.1.1 all applicable Law regarding health and safety;
 - 30.1.2 the Buyer's current health and safety policy, as provided to the Supplier, to the extent that Supplier Staff are located at any of the Buyer's Premises in the course of performing the Services under this Contract.
- 30.2 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 this Contract.

31 Environment

- 31.1 The Supplier must ensure that Supplier Staff are aware of and comply with the Environmental Policy.

32 Tax and financial matters

- 32.1 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.
- 32.2 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:
- 32.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
 - 32.2.2 indemnify and keep the Buyer indemnified in full 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 Contract Period in connection with the provision of the Services by the Supplier or any Supplier Staff.
- 32.3 The Buyer may set off any amount owed by the Supplier to the Buyer against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.

33 Conflict of interest

- 33.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Staff are placed in a position of potential or actual Conflict of Interest. Should any Conflict of Interest arise or become apparent, the Supplier will disclose the same to the Buyer immediately with full details.
- 33.2 The Supplier shall promptly notify the Buyer if any Conflict of Interest is likely to arise and shall comply with any reasonable instructions of the Buyer in relation to the Conflict of Interest.
- 33.3 The Buyer can terminate this 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 this Contract

- 34.1 As soon as it is aware of it, the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:
- 34.1.1 Law;
 - 34.1.2 Clause 13; or
 - 34.1.3 Clauses 28 to 33 (inclusive).

- 34.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith report a breach listed in Clause 34.1 to the Buyer or a Prescribed Person.

35 Resolving disputes

Senior representatives

- 35.1 If there is a Dispute, the senior representatives of each Party 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.

Mediation

- 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.

Tribunal

- 35.3 Unless the Buyer 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:

35.3.1 determine the Dispute; and/or

35.3.2 grant interim remedies, or any other provisional or protective relief.

- 35.4 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.

- 35.5 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 35.3, 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 35.4.

- 35.6 The Supplier cannot suspend the performance of this Contract during any Dispute.

Adjudication

- 35.7 Clause 35.7 to 35.18 shall only apply to disputes arising under a construction contract as defined in the Housing Grants, Construction and Regeneration Act 1996, or any amendment or re-enactment thereof.

- 35.8 Notwithstanding any provision in the Contract, either party shall have the right to refer any dispute or difference as to a matter under or in connection with the Contract to adjudication and either party may, at any time, issue a Notice (a ‘Notice of Adjudication’) to the other stating his intention to do so. The ensuing adjudication shall be conducted in accordance with the edition of the ‘Adjudication Rules’ published by

the Technology and Construction Solicitors' Association (TeCSA) current at the time of service of the Notice of Adjudication.

- 35.9 Unless the adjudicator has already been appointed, he is to be appointed to a timetable with the object of securing his appointment and referral of the dispute to him within seven days of the service of the Notice of Adjudication. The adjudicator shall be appointed in accordance with the Adjudication Rules.
- 35.10 The adjudicator shall reach his decision within twenty-eight days of referral or such other longer period as may be agreed between the parties after the dispute has been referred.
- 35.11 The adjudicator may extend the period of twenty-eight days by up to fourteen days with the consent of the party by whom the dispute was referred.
- 35.12 The adjudicator shall act impartially.
- 35.13 The adjudicator may take the initiative in ascertaining the facts and the law.
- 35.14 The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings, by arbitration or by agreement.
- 35.15 The adjudicator may correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 35.16 The adjudicator may include in his decision a direction as to the allocation of his fees and expenses as between the parties.
- 35.17 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith. Furthermore, any personnel of the adjudicator acting in connection with the carrying out of the adjudication shall be similarly protected from liability.
- 35.18 The adjudicator:
 - 35.18.1 may determine more than one Dispute at the same time and (if required to do so by the respondent Party to a claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines the other matter(s) referred to him for decision; and
 - 35.18.2 at the same time as he gives any decision, must give written reasons.

Related Disputes

- 35.19 If the dispute or difference to be referred to adjudication or arbitration (if applicable) under Clauses 35.4 and 35.8 (if applicable) raises issues which are substantially the same as or connected with issues raised in a related dispute involving the Buyer under a Buyer Supply Chain Contract (a "Related Dispute"), the Parties agree that the adjudicator/mediator for the purposes of determining the dispute under this Contract shall be the adjudicator/mediator already appointed to determine the Related Dispute (if applicable).
- 35.20 If the Related Dispute has not already been referred for determination, the Parties may refer the Related Dispute to the adjudicator/mediator to whom the dispute under this Contract has been referred, and the proceedings shall be consolidated save where the

adjudicator/mediator shall in his absolute discretion determine that it is not possible to consolidate proceedings or the mediation.

36 Which law applies

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