

**SHORT FORM CONTRACT FOR THE SUPPLY OF GOODS AND/OR SERVICES****I. Index**

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**II. Cover Letter**

D H Mansfield Limited T/A The Mansfield Group  
Phoenix House,  
Bradnor Road,  
Sharston Industrial Area,  
Manchester,  
M22 4TE

Attn: [REDACTED]

By email to: [REDACTED]

Date: 13 February 2025

Our ref: Project\_758

Dear Andrew,

Following your Proposal for the supply of Heavy Goods Vehicle Recovery and Detention Services to Border Force: Clandestine Entrants Civil Penalty Team (CECPT), we are pleased confirm our intention to enter into this Contract.

The attached Order Form, contract Conditions and the Annexes set out the terms of the Contract between the Secretary of State for the Home Department acting through Border Force and D H Mansfield Limited T/A The Mansfield Group for the provision of the Deliverables set out in the Order Form.

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful Delivery of the Deliverables. Please confirm your acceptance of this Contract by signing and returning the Order Form to Border Force Procurement Team at the following email address: [REDACTED] within **5 days** from the date of the Order Form. No other form of acknowledgement will be accepted. Please remember to include the reference number(s) above in any future communications relating to this Contract.

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

Yours faithfully,

Arielle Nitonde

**III. Order Form**

<b>1. Contract Reference</b>	<b>Project_758</b>	
<b>2. Buyer</b>	<p>The Secretary of State for the Home Department acting through Border Force (also known as the Authority): 2 Marsham Street, London, SW1P 4DF.</p> <p>In entering into this Contract, the Buyer is acting as part of the Crown and the Supplier shall be treated as contracting with the Crown as a whole.</p>	
<b>3. Supplier</b>	<p>D H Mansfield Limited T/A The Mansfield Group Phoenix House, Bradnor Road, Sharston Industrial Area, Manchester, M22 4TE</p> <p>Registration number: 3557665</p>	
<b>4. The Contract</b>	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables.</p> <p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("<b>Conditions</b>") and Annexes.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.</p> <p><b><i>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</i></b></p>	
<b>5. Deliverables</b>	<b>Goods</b>	None
	<b>Services</b>	Recovery and storage of detained vehicles. See Annex 2 – Specification for further details.
<b>6. Specification</b>	The specification of the Deliverables is as set out Annex 2 – Specification	
<b>7. Start Date</b>	17 February 2025	
<b>8. Expiry Date</b>	16 February 2027	
<b>9. Extension Period</b>	<p>The Buyer may extend the Contract for a period of up to 12 Months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date.</p> <p>The Conditions of the Contract shall apply throughout any such extended period.</p>	
<b>10. Buyer Cause</b>	Any Material Breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents	

	in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier.
<b>11. Optional Intellectual Property Rights ("IPR") Clauses</b>	Not applicable
<b>12. Charges</b>	The Charges for the Deliverables shall be as set out in Annex 3 – Charges.
<b>13. Payment</b>	<p>Payment of undisputed invoices will be made within 30 days of receipt of invoice, which must be submitted promptly by the Supplier.</p> <p>All invoices must be sent, quoting a valid Purchase Order Number (PO Number) and any other relevant details, to: [REDACTED]</p> <p>Within 15 Working Days of receipt of your countersigned copy of this Order Form, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, item number (if applicable) and the details (name, email, and telephone number) of your Buyer contact (i.e. Buyer Authorised Representative). Non-compliant invoices may be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable team either by email to: [REDACTED] or by telephone [REDACTED] between 09:00-17:00 Monday to Friday.</p>
<b>14. Data Protection Liability Cap</b>	In accordance with clause 12.6 of the Conditions, the Supplier's total aggregate liability under clause 14.7.5 of the Conditions is no more than the Data Protection Liability Cap, being one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Buyer to the Supplier for the Services.
<b>15. Progress Meetings and Progress Reports</b>	<ul style="list-style-type: none"> <li>The Supplier shall attend progress meetings with the Buyer every quarter and all meetings shall be minuted with key actions captured by the Supplier.</li> <li>The Supplier shall provide the Buyer with progress reports every month in line with the requirements set out in Annex 2 – Specification.</li> </ul>
<b>16. Buyer Authorised</b>	<p>For general liaison your contact will continue to be</p> <p>[REDACTED]</p>

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<b>Representative(s)</b>	or, in their absence, [REDACTED]															
<b>17. Supplier Authorised Representative(s)</b>	For general liaison your contact will continue to be [REDACTED] or, in their absence, [REDACTED]															
<b>18. Address for notices</b>	<table border="0"> <tr> <td><b>Buyer:</b></td><td><b>Supplier:</b></td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td></tr> <tr> <td>Attention: [REDACTED]</td><td>Attention: [REDACTED]</td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td></tr> <tr> <td>Email: [REDACTED]</td><td>Email: [REDACTED]</td></tr> <tr> <td></td><td>[REDACTED]</td></tr> </table>	<b>Buyer:</b>	<b>Supplier:</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Attention: [REDACTED]	Attention: [REDACTED]	[REDACTED]	[REDACTED]	Email: [REDACTED]	Email: [REDACTED]		[REDACTED]	
<b>Buyer:</b>	<b>Supplier:</b>															
[REDACTED]	[REDACTED]															
[REDACTED]	[REDACTED]															
Attention: [REDACTED]	Attention: [REDACTED]															
[REDACTED]	[REDACTED]															
Email: [REDACTED]	Email: [REDACTED]															
	[REDACTED]															
<b>19. Key Staff</b>	<table border="0"> <tr> <td><b>Key Staff Role:</b></td><td><b>Key Staff Name</b></td><td><b>Contact Details:</b></td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td><td>[REDACTED]</td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td><td>[REDACTED]</td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td><td>[REDACTED]</td></tr> <tr> <td>[REDACTED]</td><td>[REDACTED]</td><td>[REDACTED]</td></tr> </table>	<b>Key Staff Role:</b>	<b>Key Staff Name</b>	<b>Contact Details:</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Key Staff Role:</b>	<b>Key Staff Name</b>	<b>Contact Details:</b>														
[REDACTED]	[REDACTED]	[REDACTED]														
[REDACTED]	[REDACTED]	[REDACTED]														
[REDACTED]	[REDACTED]	[REDACTED]														
[REDACTED]	[REDACTED]	[REDACTED]														
<b>20. Procedures and Policies</b>	<p>For the purposes of the Contract the security requirements and vetting procedures are detailed at:</p> <p><a href="https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework</a></p> <p>The Buyer shall 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 he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.</p>															

<b>21. Special Terms</b>	Not Applicable
<b>22. Incorporated Terms</b>	<p>The following documents are incorporated into the Contract. If there is any conflict, the following order of precedence applies:</p> <p>(a) The cover letter from the Buyer to the Supplier dated 13 February 2025 (if used)</p> <p>(b) This Order Form</p> <p>(c) Any Special Terms (see row 21 (Special Terms) in this Order Form)</p> <p>(d) The following Annexes in equal order of precedence:</p> <ol style="list-style-type: none"> <li>I. Annex 1 - Processing Personal Data,</li> <li>II. Annex 2 – Specification,</li> <li>III. Annex 3 – Charges,</li> <li>IV. Annex 4 – Supplier Proposal, unless any part of the Proposal offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Proposal will take precedence over the documents above.</li> <li>V. And all other Annexes.</li> </ol>

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer acting on behalf of the Crown
Name: [REDACTED]	Name: [REDACTED]
Job title: [REDACTED] [REDACTED]	Job title: [REDACTED]
Date: [REDACTED]	Date: [REDACTED]
Signature [REDACTED]	Signature [REDACTED]

**IV. Short form Terms (“Conditions”)****1 DEFINITIONS USED IN THE CONTRACT**

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

<b>“Affiliates”</b>	in relation to a body corporate, any other entity which directly or indirectly Controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>“Controlled”</b> shall be construed accordingly), is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>“Audit”</b>	<p>the Buyer’s right to:</p> <ul style="list-style-type: none"> <li>(a) verify the accuracy of the Charges and any other amounts payable by the Buyer under the Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>(b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Deliverables;</li> <li>(c) verify the Supplier’s and each Subcontractor’s compliance with the applicable Law;</li> <li>(d) identify or investigate actual or suspected breach of clauses 4 to 34 (inclusive), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>(e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>(f) obtain such information as is necessary to fulfil the Buyer’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>(g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;</li> <li>(h) carry out the Buyer’s internal and statutory audits and to prepare, examine and/or certify the Buyer’s annual and interim reports and accounts;</li> </ul>



	(i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
<b>“Beneficiary”</b>	A Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>“Buyer Cause”</b>	has the meaning given to it in the Order Form;
<b>“Buyer”</b>	the person named as Buyer in the Order Form. Where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
<b>“Charges”</b>	the charges for the Deliverables as specified in the Order Form;
<b>“Claim”</b>	any claim which it appears that the Buyer is, or may become, entitled to indemnification under this Contract;
<b>“Conditions”</b>	means these short form terms and conditions of contract;
<b>“Confidential Information”</b>	all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which <ul style="list-style-type: none"> <li>(a) is known by the receiving Party to be confidential;</li> <li>(b) is marked as or stated to be confidential; or</li> <li>(c) ought reasonably to be considered by the receiving Party to be confidential;</li> </ul>
<b>“Conflict of Interest”</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
<b>“Contract”</b>	the contract between the Buyer and the Supplier which is created by the Supplier’s counter signing the Order Form and includes the cover letter (if used), Order Form, these Conditions and the Annexes;
<b>“Controller”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Crown Body”</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or

	destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>“Data Protection Impact Assessment”</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	<p>(a) the UK GDPR,</p> <p>(b) the DPA 2018;</p> <p>(c) all applicable Law about the processing of personal data and privacy and guidance issued by the Information Commissioner and other regulatory authority; and</p> <p>(d) (to the extent that it applies) the EU GDPR (and in the event of conflict, the UK GDPR shall apply);</p>
<b>“Data Protection Liability Cap”</b>	has the meaning given to it in row 14 of the Order Form;
<b>“Data Protection Officer”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Data Subject Access Request”</b>	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;
<b>“Data Subject”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Deliver”</b>	hand over of the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and stacking and any other specific arrangements agreed in accordance with clause 4.2. “Delivered” and “Delivery” shall be construed accordingly;
<b>“Deliverables”</b>	means the Goods, Services, and/or software to be supplied under the Contract as set out in the Order Form;
<b>“DPA 2018”</b>	the Data Protection Act 2018;
<b>“Effective Date”</b>	the date on which the final Party has signed the Contract;
<b>“EU GDPR”</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;

<b>“Existing IPR”</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>“Expiry Date”</b>	the date for expiry of the Contract as set out in the Order Form;
<b>“FOIA”</b>	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>“Force Majeure Event”</b>	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the <b>“Affected Party”</b>) which prevent or materially delay the Affected Party from performing its obligations under the Contract;</li> <li>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>(c) acts of a Crown Body, local government or regulatory bodies;</li> <li>(d) fire, flood or any disaster; or</li> <li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>(a) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;</li> <li>(b) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>(c) any failure of delay caused by a lack of funds,</li> </ul> <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<b>“Good Industry Practice”</b>	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>“Goods”</b>	the goods to be supplied by the Supplier to the Buyer under the Contract;

<b>“Government Data”</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which:</p> <p>(i) are supplied to the Supplier by or on behalf of the Buyer; or</p> <p>(ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Buyer is the Controller;</p>
<b>“Indemnifier”</b>	a Party from whom an indemnity is sought under this Contract;
<b>“Independent Controller”</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>Indexation</b>	means as set out in paragraph 5.1.4 of Annex 3 (Charges);
<b>“Information Commissioner”</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>“Insolvency Event”</b>	<p>in respect of a person:</p> <p>(a) if that person is insolvent;</p> <p>(b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</p> <p>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business;</p> <p>(d) if the person makes any composition with its creditors; or</p> <p>(e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;</p>
<b>“IP Completion Day”</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>“Joint Controller Agreement”</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Part B Joint Controller Agreement ( <i>Optional</i> ) of Annex 1 – Processing Personal Data;
<b>“Joint Controllers”</b>	Where two or more Controllers jointly determine the purposes and means of processing;

<b>“Key Staff”</b>	any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier;
<b>“Law”</b>	any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Material Breach”</b>	a single serious breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied)
<b>“National Insurance”</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>“New IPR Items”</b>	means a deliverable, document, product or other item within which New IPR subsists;
<b>“New IPR”</b>	all and intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>“Open Licence”</b>	means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> as updated from time to time and the Open Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> as updated from time to time;
<b>“Order Form”</b>	the order form signed by the Buyer and the Supplier printed above these Conditions;
<b>“Party”</b>	the Supplier or the Buyer (as appropriate) and “Parties” shall mean both of them;
<b>“Personal Data Breach”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires and includes any breach of Data Protection Legislation relevant to Personal Data processed pursuant to the Contract;
<b>“Personal Data”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

<b>“Prescribed Person”</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> as updated from time to time;
<b>“Processor Personnel”</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the Contract;
<b>“Processor”</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>“Prohibited Acts”</b>	means any of the following:  (a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;  (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;  (c) committing any offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Buyer; or  (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
<b>Proposal</b>	A Proposal submitted by a Supplier in response to the RFP
<b>“Protective Measures”</b>	technical and organisational measures which must take account of:  (a) the nature of the data to be protected; (b) harm that might result from Data Loss Event; (c) state of technological development; (d) the cost of implementing any measures;

	including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
<b>“Purchase Order Number” or “PO Number”</b>	the Buyer’s unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the Contract;
<b>“Rectification Plan”</b>	the Supplier’s plan (or revised plan) to rectify its Material Breach which shall include: <ul style="list-style-type: none"> <li>(a) full details of the Material Breach that has occurred, including a root cause analysis;</li> <li>(b) the actual or anticipated effect of the Material Breach; and</li> <li>(c) the steps which the Supplier proposes to take to rectify the Material Breach (if applicable) and to prevent such Material Breach from recurring, including timescales for such steps and for the rectification of the Material Breach (where applicable);</li> </ul>
<b>“Regulations”</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>“Request For Information”</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term <b>“request”</b> shall apply);
<b>Request for Proposal or “RFP”</b>	this Request for Proposal document and all related documents issued by the Buyer and made available to the Supplier.
<b>“Services”</b>	the services to be supplied by the Supplier to the Buyer under the Contract;
<b>“Specification”</b>	the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>“Staff Vetting Procedures”</b>	vetting procedures that accord with Good Industry Practice or, where applicable, the Buyer’s procedures or policies for the vetting of personnel as specified in the Order Form or provided to the Supplier in writing following agreement to the same by the Supplier from time to time;
<b>“Start Date”</b>	the start date of the Contract set out in the Order Form;
<b>“Sub-Contract”</b>	any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:

	<p>(a) provides the Deliverables (or any part of them);</p> <p>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</p> <p>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</p>
<b>“Subcontractor”</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>“Subprocessor”</b>	any third party appointed to process Personal Data on behalf of the Processor related to the Contract;
<b>“Supplier Staff”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Contract;
<b>“Supplier”</b>	the person named as Supplier in the Order Form;
<b>“Term”</b>	the period from the Start Date to the Expiry Date as such period may be extended in accordance with clause 11.2 or terminated in accordance with the Contract;
<b>“Third Party IPR”</b>	intellectual property rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
<b>“Transparency Information”</b>	<p>In relation to Contracts with a value above the relevant threshold set out in Part 2 of the Regulations only, the content of the Contract, including any changes to this Contract agreed from time to time, as well as any information relating to the Deliverables and performance pursuant to the Contract required to be published by the Buyer to comply with its transparency obligations, including those set out in Public Procurement Policy Note 09/21 (update to legal and policy requirements to publish procurement information on Contracts Finder) (<a href="https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder">https://www.gov.uk/government/publications/ppn-0921-requirements-to-publish-on-contracts-finder</a>) as updated from time to time and Public Procurement Policy Note 01/17 (update to transparency principles) where applicable (<a href="https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles">https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles</a>) as updated from time to time except for:</p> <p>(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and</p> <p>(b) Confidential Information;</p>
<b>“UK GDPR”</b>	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4);



<b>“VAT”</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>“Worker”</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">Tax Arrangements of Public Appointees</a> ) ( <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> ) as updated from time to time applies in respect of the Deliverables; and
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## 2 UNDERSTANDING THE CONTRACT

2.1 In the Contract, unless the context otherwise requires:

- 2.1.1 references to numbered clauses are references to the relevant clause in these Conditions;
- 2.1.2 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;
- 2.1.3 references to “writing” include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.1.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act) and to any legislation or byelaw made under that Law;
- 2.1.5 the word “including”, “for example” and similar words shall be understood as if they were immediately followed by the words “without limitation”;
- 2.1.6 any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.

### **3 HOW THE CONTRACT WORKS**

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

### **4 WHAT NEEDS TO BE DELIVERED**

#### **4.1 All Deliverables**

- 4.1.1 The Supplier must provide Deliverables:
- 4.1.1.1 in accordance with the Specification, the Proposal in Annex 4 – Supplier (where applicable) and the Contract;
  - 4.1.1.2 using reasonable skill and care;
  - 4.1.1.3 using Good Industry Practice;
  - 4.1.1.4 using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
  - 4.1.1.5 on the dates agreed; and
  - 4.1.1.6 that comply with all Law.
- 4.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

#### **4.2 Goods clauses**

- 4.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 4.2.2 The Supplier transfers ownership of the Goods on completion of Delivery or payment for those Goods, whichever is earlier.
- 4.2.3 Risk in the Goods transfers to the Buyer on Delivery, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 4.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 4.2.5 The Supplier must Deliver the Goods on the date and to the location specified in the Order Form, during the Buyer's working hours (unless otherwise specified in the Order Form).

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- 4.2.6 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 4.2.7 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 4.2.8 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 4.2.9 The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- 4.2.10 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable endeavours to minimise these costs.
- 4.2.11 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- 4.2.12 The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

### **4.3 Services clauses**

- 4.3.1 Late Delivery of the Services will be a default of the Contract.
- 4.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including the security requirements (where any such requirements have been provided).
- 4.3.3 The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- 4.3.4 The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.

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- 4.3.5 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 4.3.6 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 4.3.7 On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- 4.3.8 The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- 4.3.9 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **5 PRICING AND PAYMENTS**

- 5.1 Subject to Annex 7 (Service Credits) in exchange for the Deliverables, the Supplier must invoice the Buyer for the charges in the Order Form.
- 5.2 All Charges:
  - 5.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 5.2.2 include all costs and expenses connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the invoice or in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
  - 5.4.1 includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer; and
  - 5.4.2 includes a detailed breakdown of Deliverables which have been delivered.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 36.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 5.7 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

**6 THE BUYER'S OBLIGATIONS TO THE SUPPLIER**

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
- 6.1.1 the Buyer cannot terminate the Contract under clause 11;
  - 6.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
  - 6.1.3 the Supplier is entitled to additional time needed to deliver the Deliverables; and
  - 6.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
- 6.2.1 gives notice to the Buyer within 10 Working Days of becoming aware;
  - 6.2.2 demonstrates that the failure only happened because of the Buyer Cause; and
  - 6.2.3 mitigated the impact of the Buyer Cause.

**7 RECORD KEEPING AND REPORTING**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to its premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the Audit.
- 7.4 The Buyer or an auditor can Audit the Supplier.
- 7.5 During an Audit, the Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.6 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Breach by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 7.7 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 7.7.1 tell the Buyer and give reasons;
  - 7.7.2 propose corrective action; and
  - 7.7.3 provide a deadline for completing the corrective action.
- 7.8 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:

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- 7.8.1 require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand; and
- 7.8.2 if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for Material Breach (or on such date as the Buyer notifies) and the consequences of termination in Clause 11.5.1 shall apply.

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

## 8 SUPPLIER STAFF

- 8.1 The Supplier Staff involved in the performance of the Contract must:
  - 8.1.1 be appropriately trained and qualified;
  - 8.1.2 be vetted in accordance with the Staff Vetting Procedures; and
  - 8.1.3 comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where the Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.
- 8.6 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:
  - 8.6.1 requested to do so by the Buyer or the Buyer approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 8.6.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or

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8.6.3 the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.

8.7 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 Buyer, or is of a type otherwise advised by the Buyer (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

## 9 RIGHTS AND PROTECTION

9.1 The Supplier warrants and represents that:

9.1.1 it has full capacity and authority to enter into and to perform the Contract;

9.1.2 the Contract is entered into by its authorised representative;

9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

9.1.4 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 the Contract;

9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and the Buyer to receive the Deliverables;

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

9.1.7 it is not impacted by an Insolvency Event.

9.2 The warranties and representations in clause 3.3 and clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.

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

9.3.1 wilful misconduct of the Supplier, any of its Subcontractor and/or Supplier Staff that impacts the Contract; and

9.3.2 non-payment by the Supplier of any tax or National Insurance.

9.4 If the Supplier becomes aware of a representation or warranty made in relation to the Contract that becomes untrue or misleading, it must immediately notify the Buyer.

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

## 10 INTELLECTUAL PROPERTY RIGHTS (“IPRS”)

10.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable worldwide licence to use, copy and adapt the Supplier's Existing IPR to enable the Buyer and its sub-licensees to both:

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10.1.1 receive and use the Deliverables; and

10.1.2 use the New IPR.

The termination or expiry of the Contract does not terminate any licence granted under this clause 10.

- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a royalty-free, non-exclusive, non-transferable licence to use, copy, and adapt any Existing IPRs and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Term and commercially exploiting the New IPR developed under the Contract. This licence is sub-licensable to a Subcontractor for the purpose of enabling the Supplier to fulfil its obligations under the Contract, and in that case the Subcontractor must enter into a confidentiality undertaking with the Supplier on the same terms as set out in clause 15 (What you must keep confidential).
- 10.3 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR and keep this record updated throughout the Term.
- 10.4 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract, it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 10.5 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 this clause 10 or otherwise agreed in writing.
- 10.6 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an **"IPR Claim"**), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- 10.7 If an IPR Claim is made or anticipated, the Supplier must at its own option and expense, either:
- 10.7.1 obtain for the Buyer the rights in clause 10.1 without infringing any third party intellectual property rights; and
  - 10.7.2 replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.
  - 10.7.3 If the Supplier is not able to resolve the IPR Claim to the Buyer's reasonable satisfaction within a reasonable time, the Buyer may give written notice that it terminates the Contract from the date set out in the notice, or where no date is given in the notice, the date of the notice. On termination, the consequences of termination in clauses 11.5.1 shall apply.
- 10.8 The Supplier shall not use in the Delivery of the Deliverables any Third Party IPR unless:
- 10.8.1 the Buyer gives its approval to do so; and
  - 10.8.2 one of the following conditions applies:



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- 10.8.2.1 the owner or an authorised licensor of the relevant Third Party IPR has granted the Buyer a direct licence that provides the Buyer with the rights in clause 10.1; or
- 10.8.2.2 if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a direct licence to the Third Party IPR as set out in clause 10.8.2.1:
  - (a) the Supplier provides the Buyer with details of the licence terms it can obtain and the identity of those licensors;
  - (b) the Buyer agrees to those licence terms; and
  - (c) the owner or authorised licensor of the Third Party IPR grants a direct licence to the Buyer on those terms; or
- 10.8.2.3 the Buyer approves in writing, with reference to the acts authorised and the specific intellectual property rights involved.

10.9 In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it, does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.

## 11 ENDING THE CONTRACT

- 11.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract, or earlier if required by Law.
- 11.2 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

### 11.3 Ending the Contract without a reason

- 11.3.1 The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice, and if it's terminated clause 11.6.2 applies.

### 11.4 When the Buyer can end the Contract

- 11.4.1 If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier and the consequences of termination in Clause 11.5.1 shall apply:
  - 11.4.1.1 there's a Supplier Insolvency Event;
  - 11.4.1.2 the Supplier is in Material Breach of the Contract;
  - 11.4.1.3 there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;

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- 11.4.1.4 the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
  - 11.4.1.5 the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
  - 11.4.1.6 the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.
- 11.4.2 If any of the events in 73(1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and clauses 11.5.1.2 to 11.5.1.7 apply.

## 11.5 What happens if the Contract ends

- 11.5.1 Where the Buyer terminates the Contract under clause 10.9, 11.4, 7.8.2, 28.4.2, or Paragraph 8 of Part B Joint Controller Agreement (*Optional*) of Annex 1 – Processing Personal Data (if used), all of the following apply:
- 11.5.1.1 the Supplier is responsible for the Buyer's reasonable costs of procuring replacement Deliverables for the rest of the term of the Contract;
  - 11.5.1.2 the Buyer's payment obligations under the terminated Contract stop immediately;
  - 11.5.1.3 accumulated rights of the Parties are not affected;
  - 11.5.1.4 the Supplier must promptly delete or return the Government Data except where required to retain copies by Law;
  - 11.5.1.5 the Supplier must promptly return any of the Buyer's property provided under the Contract;
  - 11.5.1.6 the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement; and
  - 11.5.1.7 the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.
- 11.5.2 The following clauses survive the expiry or termination of the Contract: 1, 4.2.9, 5, 7, 8.4, 10, 11.5, 12, 14, 15, 16, 18, 19, 32.2.2, 36 and 37 and any clauses which are expressly or by implication intended to continue.

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

- 11.6.1 The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.

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- 11.6.2 Where the Buyer terminates the Contract in accordance with clause 11.3 or the Supplier terminates the Contract under clause 11.6 or 23.4:
- 11.6.2.1 the Buyer must promptly pay all outstanding charges incurred by the Supplier;
  - 11.6.2.2 the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
  - 11.6.2.3 clauses 11.5.1.2 to 11.5.1.7 apply.
- 11.6.3 The Supplier also has the right to terminate the Contract in accordance with Clauses 20.3 and 23.4.

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

- 11.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- 11.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- 11.7.3 The Parties must agree (in accordance with clause 25)) any necessary variation required by clause 11.7, but the Supplier may not either:
- 11.7.3.1 reject the variation; or
  - 11.7.3.2 increase the Charges, except where the right to partial termination is under clause 11.3.
- 11.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

## **12 HOW MUCH YOU CAN BE HELD RESPONSIBLE FOR**

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
- 12.2.1 any indirect losses; and/or
  - 12.2.2 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:
- 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 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or

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12.3.3 any liability that cannot be excluded or limited by Law.

12.4 In spite of clause 12.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 8.4, 9.3.2, 10.6, or 32.2.2.

12.5 In spite of clause 12.1, the Buyer does not limit or exclude its liability for any indemnity given under clause 8.5.

12.6 Notwithstanding clause 12.1, but subject to clauses 12.1 and 12.3, the Supplier's total aggregate liability under clause 14.7.5 shall not exceed the Data Protection Liability Cap.

12.7 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.

12.8 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, in connection with provision of the Deliverables:

13.1.1 is expected to meet and have its Subcontractors meet the standards set out in the Supplier Code of Conduct:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier\\_Code\\_of\\_Conduct\\_v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)) as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form. The Buyer also expects to meet this Code of Conduct;

13.1.2 must comply with the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989;

13.1.3 must support the Buyer in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;

13.1.4 must comply with the model contract terms contained in (a) to (m) of Annex C of the guidance to [PPN 02/23 \(Tackling Modern Slavery in Government Supply Chains\)](#),<sup>1</sup> as such clauses may be amended or updated from time to time; and

13.1.5 meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>, as updated from time to time.

13.2 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable Law to do with the Contract.

13.3 The Supplier must appoint a compliance officer who must be responsible for ensuring that the Supplier complies with Law, clause 13.1 and clauses 27 to 34.

<sup>1</sup> <https://www.gov.uk/government/publications/ppn-0223-tackling-modern-slavery-in-government-supply-chains>

**14 DATA PROTECTION AND SECURITY**

- 14.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.2 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies via secure encrypted method upon reasonable request.
- 14.3 The Supplier must ensure that any Supplier, Subcontractor, or Subprocessor system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified in the Order Form or otherwise in writing by the Buyer (where any such requirements have been provided).
- 14.4 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 14.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- 14.5.1 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
  - 14.5.2 restore the Government Data itself or using a third party.
- 14.6 The Supplier must pay each Party's reasonable costs of complying with clause 14.5 unless the Buyer is at fault.
- 14.7 The Supplier:
- 14.7.1 must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within 10 Working Days of a written request;
  - 14.7.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - 14.7.3 must securely destroy all storage media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are Independent Controllers or Joint Controllers;
  - 14.7.4 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, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are Independent Controllers or Joint Controllers; and
  - 14.7.5 indemnifies the Buyer against any and all losses incurred if the Supplier breaches clause 14 or any Data Protection Legislation.
- 14.8 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the DPA 2018. A Party may act as:

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- 14.8.1 “Controller” in respect of the other Party who is “Processor”;
- 14.8.2 “Processor” in respect of the other Party who is “Controller”;
- 14.8.3 “Joint Controller” with the other Party;
- 14.8.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under the Contract and shall specify in Part A Authorised Processing Template of Annex 1 – Processing Personal Data which scenario they think shall apply in each situation.

#### **14.9 Where one Party is Controller and the other Party its Processor**

- 14.9.1 Where a Party is a Processor, the only processing that the Processor is authorised to do is listed in Part A Authorised Processing Template of Annex 1 – Processing Personal Data by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).
- 14.9.2 The Processor must notify the Controller immediately if it thinks the Controller's instructions breach the Data Protection Legislation.
- 14.9.3 The Processor must give all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment before starting any processing, which may include, at the discretion of the Controller:
  - 14.9.3.1 a systematic description of the expected processing and its purpose;
  - 14.9.3.2 the necessity and proportionality of the processing operations;
  - 14.9.3.3 the risks to the rights and freedoms of Data Subjects; and
  - 14.9.3.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 14.9.4 The Processor must, in relation to any Personal Data processed under this Contract:
  - 14.9.4.1 process that Personal Data only in accordance with Part A Authorised Processing Template of Annex 1 – Processing Personal Data unless the Processor is required to do otherwise by Law. If lawful to notify the Controller, the Processor must promptly notify the Controller if the Processor is otherwise required to process Personal Data by Law before processing it.
  - 14.9.4.2 put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Controller.
  - 14.9.4.3 Ensure that:
    - (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Part A Authorised Processing Template of Annex 1 – Processing Personal Data);

- (b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Processor's duties under this clause 14;
  - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
  - (iii) are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise allowed by the Contract; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (c) the Processor must not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (d) the transfer is in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- (e) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or the transfer is in accordance with Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
  - (i) where the transfer is subject to UK GDPR:
    - (A) the International Data Transfer Agreement (the “**IDTA**”), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018 as well as any additional measures determined by the Controller;
    - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (“**EU SCCs**”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “**Addendum**”) as published by the Information Commissioner's Office from time to time; and/or

- (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
  - (f) the Data Subject has enforceable rights and effective legal remedies when transferred;
  - (g) the Processor meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (h) the Processor complies with the Controller's reasonable prior instructions about the processing of the Personal Data.
- 14.9.5 The Processor must at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 14.9.6 The Processor must notify the Controller immediately if it:
  - 14.9.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 14.9.6.2 receives a request to rectify, block or erase any Personal Data;
  - 14.9.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 14.9.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 14.9.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law; and
  - 14.9.6.6 becomes aware of a Data Loss Event.
- 14.9.7 Any requirement to notify under clause 14.9.6 includes the provision of further information to the Controller in stages as details become available.
- 14.9.8 The Processor must promptly provide the Controller with full assistance in relation to any Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 14.9.6. This includes giving the Controller:
  - 14.9.8.1 full details and copies of the complaint, communication or request;
  - 14.9.8.2 reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Legislation;
  - 14.9.8.3 any Personal Data it holds in relation to a Data Subject on request;



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- 14.9.8.4 assistance that it requests following any Data Loss Event; and
- 14.9.8.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner's Office or any other regulatory authority.
- 14.9.9 The Processor must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Processor employs fewer than 250 staff, unless either the Controller determines that the processing:
  - 14.9.9.1 is not occasional;
  - 14.9.9.2 includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 14.9.9.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 14.9.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 14.9.11 Before allowing any Subprocessor to process any Personal Data, the Processor must:
  - 14.9.11.1 notify the Controller in writing of the intended Subprocessor and processing;
  - 14.9.11.2 obtain the written consent of the Controller;
  - 14.9.11.3 enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor; and
  - 14.9.11.4 provide the Controller with any information about the Subprocessor that the Controller reasonably requires.
- 14.9.12 The Processor remains fully liable for all acts or omissions of any Subprocessor.
- 14.9.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority.

#### **14.10 Joint Controllers of Personal Data**

- 14.10.1 In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Part B Joint Controller Agreement (*Optional*) of Annex 1 – Processing Personal Data.

#### **14.11 Independent Controllers of Personal Data**

- 14.11.1 In the event that the Parties are Independent Controllers in respect of Personal Data under the Contract, the terms set out in Part C Independent Controllers (*Optional*) of Annex 1 – Processing Personal Data shall apply to this Contract.

### **15 WHAT YOU MUST KEEP CONFIDENTIAL**

- 15.1 Each Party must:

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- 15.1.1 keep all Confidential Information it receives confidential and secure;
  - 15.1.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
  - 15.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 15.2 In spite of clause 15.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- 15.2.1 where disclosure is required by applicable Law if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
  - 15.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
  - 15.2.3 if the information was given to it by a third party without obligation of confidentiality;
  - 15.2.4 if the information was in the public domain at the time of the disclosure;
  - 15.2.5 if the information was independently developed without access to the disclosing Party's Confidential Information;
  - 15.2.6 on a confidential basis, to its auditors or for the purposes of regulatory requirements;
  - 15.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
  - 15.2.8 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.
- 15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 15.4 The Buyer may disclose Confidential Information in any of the following cases:
- 15.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 15.4.2 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;
  - 15.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 15.4.4 where requested by Parliament; and
  - 15.4.5 under clauses 5.7 and 16.

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- 15.5 For the purposes of clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 15.
- 15.6 Transparency Information, and Information which is exempt from disclosure by clause 16 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable endeavours to ensure that Supplier Staff do not either.

## **16 WHEN YOU CAN SHARE INFORMATION**

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 16.2.1 comply with any Request For Information
  - 16.2.2 if the Contract has a value over the relevant threshold in Part 2 of the Regulations, comply with any of its obligations in relation to publishing Transparency Information.
- 16.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request For Information and may talk to the Supplier to help it decide whether to publish information under clause 16. The Buyer will, acting reasonably, seek to apply the relevant exemption set out in the FOIA to Commercially Sensitive Information set out in Annex 8. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## **17 INSURANCE**

- 17.1 Without prejudice to its obligations to the Buyer under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in Annex 6 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 6 and any other insurances as may be required by applicable Law (together the "Insurances"). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 17.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 17.3 The Insurances shall be taken out and maintained with insurers who are:
- 17.3.1 of good financial standing;
  - 17.3.2 appropriately regulated;

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- 17.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
  - 17.3.4 of good repute in the international insurance market.
- 17.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.
- 17.5 Without limiting the other provisions of this Contract, the Supplier shall:
  - 17.5.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 17.5.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 17.5.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
- 17.6 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 17.7 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Buyer shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.
- 17.8 The Supplier shall upon the Start Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this clause 17 and Annex 6. Receipt of such evidence by the Buyer shall not in itself constitute acceptance by the Buyer or relieve the Supplier of any of its liabilities and obligations under this Contract.
- 17.9 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the periods specified in Annex 6.
- 17.10 Where the Supplier intends to claim under any of the Insurances for any matters that are not related to the Services and/or the Contract, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in Annex 6, the Supplier shall promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in Annex 6.
- 17.11 Subject to clause 17.12, the Supplier shall notify the Buyer in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

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- 17.12 Without prejudice to the Supplier's obligations under clause 17.8, clause 17.11 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with Annex 6.
- 17.13 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 17.14 The Supplier shall maintain a register of all claims under the Insurances in connection with this Contract and shall allow the Buyer to review such register at any time.
- 17.15 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within 20 Working Days after any insurance claim in excess of £[100,000] relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 17.16 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 17.17 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **18 INVALID PARTS OF THE CONTRACT**

- 18.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract. The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

## **19 OTHER PEOPLE'S RIGHTS IN THE CONTRACT**

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

## **20 CIRCUMSTANCES BEYOND YOUR CONTROL**

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- 20.1.1 provides written notice to the other Party; and

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

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

20.3 Either Party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously and the consequences of termination in Clauses 11.5.1.2 to 11.5.1.7 shall apply.

20.4 Where a Party terminates under clause 20.3:

20.4.1 each Party must cover its own losses; and

20.4.2 clauses 11.5.1.2 to 11.5.1.7 apply.

## **21 RELATIONSHIPS CREATED BY THE CONTRACT**

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

## **22 GIVING UP CONTRACT RIGHTS**

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

## **23 TRANSFERRING RESPONSIBILITIES**

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

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

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

23.4 The Supplier can terminate the Contract novated under clause 23.2 to a private sector body that is experiencing an Insolvency Event.

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

**24 SUPPLY CHAIN**

- 24.1 The Supplier cannot sub-contract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- 24.1.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 24.1.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 24.1.3 the proposed Subcontractor employs unfit persons.
- 24.2 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of all such Subcontractors at all levels of the supply chain including:
- 24.2.1 their name;
  - 24.2.2 the scope of their appointment; and
  - 24.2.3 the duration of their appointment.
- 24.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.
- 24.4 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:
- 24.4.1 where such Sub-Contracts are entered into after the Start Date, the Supplier will ensure that they all contain provisions that; or
  - 24.4.2 where such Sub-Contracts are entered into before the Start Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
    - 24.4.2.1 allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
    - 24.4.2.2 require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
    - 24.4.2.3 allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.
- 24.5 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 24.5.1 there is a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 of a Subcontractor which isn't pre-approved by the Buyer in writing;

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- 24.5.2 the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 11.4;
- 24.5.3 a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- 24.5.4 the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- 24.5.5 the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Regulations.

24.6 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

## **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. The Buyer 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 at 9am on the first Working Day after sending unless an error message is received.

26.2 Notices to the Buyer or Supplier must be sent to their address or email 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 DEALING WITH CLAIMS**

27.1 If a Beneficiary becomes aware of any Claim, then it must notify the Indemnifier as soon as reasonably practical.

27.2 at the Indemnifier's cost the Beneficiary must:

- 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; and
- 27.2.3 not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

27.3 The Beneficiary must:

- 27.3.1 consider and defend the Claim diligently and in a way that does not damage the Beneficiary's reputation; and



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- 27.3.2 not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

## **28 PREVENTING FRAUD, BRIBERY AND CORRUPTION**

28.1 The Supplier shall not:

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

28.2 The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in clause 28.1 and any fraud by the Supplier Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

28.3 If the Supplier notifies the Buyer as required by clause 28.2, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

28.4 If the Supplier or the Supplier Staff engages in conduct prohibited by clause 28.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:

- 28.4.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the default; and
- 28.4.2 immediately terminate the Contract and the consequences of termination in Clause 11.5.1 shall apply.

## **29 EQUALITY, DIVERSITY AND HUMAN RIGHTS**

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

- 29.1.1 protections 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.

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29.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

### **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; and

30.1.2 the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.

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 the Contract.

### **31 ENVIRONMENT AND SUSTAINABILITY**

31.1 In performing its obligations under the Contract, the Supplier shall, to the reasonable satisfaction of the Buyer:

31.1.1 meet, in all material respects, the requirements of all applicable Laws regarding the environment; and

31.1.2 comply with its obligations under the Buyer's current environmental policy, which the Buyer must provide, and make Supplier Staff aware of such policy.

### **32 TAX**

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

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 the 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 the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

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

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- 32.3.1 the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 32.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- 32.3.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- 32.3.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 32.2 or confirms that the Worker is not complying with those requirements; and
- 32.3.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

### **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, potential or perceived Conflict of Interest.
- 33.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 33.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential conflict of interest, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 11.5.1.2 to 11.5.1.7 shall apply.

### **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 Buyer any actual or suspected breach of Law, 13.1, or clauses 27 to 33.
- 34.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 34.1 to the Buyer or a Prescribed Person.

### **35 FURTHER ASSURANCES**

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

### **36 RESOLVING DISPUTES**

- 36.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.

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- 36.2 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 36.3 to 36.5.
- 36.3 Unless the Buyer refers the dispute to arbitration using clause 36.4, the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction.
- 36.4 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.
- 36.5 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 36.3 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 36.4.
- 36.6 The Supplier cannot suspend the performance of the Contract during any dispute.

### **37 WHICH LAW APPLIES**

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

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

This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

The contact details of the Controller's Data Protection Officer are: [REDACTED]

The contact details of the Processor's Data Protection Officer are: [REDACTED]  
[REDACTED]

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Annex.

Description of authorised processing	Details
Identity of Controller and Processor / Independent Controllers / Joint Controllers for each category of Personal Data	The Buyer is the Controller, and the Supplier is the Processor
Subject matter of the processing	Recovery and storage of detained vehicles, Recovery/storage address.
Duration of the processing	For the Term of the Contract
Nature and purposes of the processing	For the provision of the services by the Supplier
Type of Personal Data being processed	[REDACTED]
Categories of Data Subject	[REDACTED]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	Retention in accordance with each Party's data retention policies complying with Data Protection Legislation.

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**Part B    Joint Controller Agreement (*Optional*)**

**Not Used**

**Part C    Independent Controllers (*Optional*)**

**Not Used**



## VI. Annex 2 – Specification

### 1. PURPOSE

- 1.1 The Secretary of State for the Home Department acting through Border Force (referred to hereafter as the “Buyer” requires the supply of Heavy Goods Vehicle (HGV) recovery and detention services.

### 2. BACKGROUND TO THE CONTRACTING BUYER

- 2.1 The Buyer is the Home Office acting through Border Force. Border Force is a professional law enforcement command within the Home Office. It is responsible for securing the UK border and controlling immigration at ports and airports across the UK and Northern France.

### 3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 3.1 The Buyer has the power to detain vehicles where it is identified that the owner/hirer have an outstanding debt to a penalty levied under the Civil Penalty Regime. Once a vehicle has been stopped, if payment is not received within a short time frame, legal paperwork is issued by the Buyer and the vehicle is taken into formal detention. The Buyer is able to recoup costs from the Debtor.

Formal detention of the vehicle continues until the point at which payment is received or the Buyer takes the decision to sell the vehicle to recoup costs.

- 3.2 The legislation which governs the Civil Penalty Regime is The Immigration and Asylum Act 1999, The Carriers’ Liability Regulations 2002, The Carriers’ Liability (Amendment) Regulations 2023, The Prevention of Clandestine Entrants: Code of Practice and The Level of Penalty: Code of Practice.
- 3.3 Once the decision has been made to formally detain a vehicle, the Buyer requires a commercial partner who can facilitate recovery of the vehicle and storage of said vehicle until payment is received or the vehicle is sold.
- 3.4 The ability to formally detain and store vehicles is an integral part of the successful operation of the Civil Penalty regime. Whilst most detentions result from vehicles stopped within the county of Kent, the Civil Penalty regime operates nationally and, as such, there is a requirement for recovery from all UK (including Northern Ireland) locations. Most detentions involve HGVs, including trailers, but the regime extends to all types of vehicles.

### 4. DEFINITIONS

Expression or Acronym	Definition
Buyer	Secretary of State for the Home Department
CECPT	Clandestine Entrants Civil Penalty Team
Data Controller	A Controller is a natural or legal person or organisation which determines the purposes and means of processing personal data
Data Processor	Is a natural or legal person or organisation which processes personal data on behalf of a Controller



Debtor	The legal person or organisation who is liable for an unpaid Civil Penalty
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679).
HGV	Heavy Goods Vehicle, or any truck with a gross combination mass of over 3,500 kilograms.
Supplier	the person named as Supplier in the Order Form

## 5. SCOPE OF REQUIREMENT

The following requirements are mandatory. The Supplier must:

- 5.1 have the capability to recover vehicles nationally and then store said vehicles until the Buyer mandates their release or sale;
- 5.2 be able to work flexibly: detentions must be arranged expediently and at short notice, similarly, the release of vehicles after detention must be arranged at short notice. Most detentions are for short (less than 72 hours) periods of time. Vehicle stops can be made by the Buyer or by other law enforcement agencies (such as UK Police) on behalf of the Buyer; as such the Supplier must be willing to liaise with various agencies. The number of detentions which takes place each calendar year is hard to predict, so the Supplier must be able to facilitate a fluctuating number of detentions;
- 5.3 be able to store the vehicle for up to 12 months, pending sale;
- 5.4 be able to recover and accommodate all types of vehicles and vehicle trailer, including where possible facilities to maintain cold storage containers;
- 5.5 have the capability to transfer the contents of a detained vehicle to another so that the goods can be released (Transshipment Requests);
- 5.6 be able to facilitate transfer to auction sites should the vehicle be sold;
- 5.7 be able to inspect vehicles on detention and release and provide detailed reports as necessary. This could involve cursory inspections of vehicles to obtain physical descriptions and details such as mileage, but also roadworthiness inspections prior to release and/or transfer;
- 5.8 ensure that all costs are reasonable and proportionate to the services provided. The Buyer shall have sole discretion as to whether costs incurred are reasonable and proportionate. The following examples are costs that may be reasonable and properly incurred by the Supplier, including but not be limited to:
  - 5.8.1 Labour costs for the Supplier's staff when providing the services, such as;
    - 5.8.1.1 Staff training;
    - 5.8.1.2 Handling equipment reasonably necessary to fulfil the required services;
    - 5.8.1.3 Hourly rate included in the Financial Pricing Model (FPM)

## 5.8.2 VAT and;

5.8.3 Any other operational costs which are necessary and properly incurred by the Supplier in the delivery of the services must be included within the FPM.

- 5.9 if requested to do so by the Buyer, seek out all information pertaining to a detained vehicle, including scanning copies of documents and share these with the Buyer.
- 5.10 the Supplier shall have a good working knowledge of the Buyer's procedures and locations by the Contract's go live date.

The following paragraphs set out the current proposed operating process:

- 5.11 The Buyer and the Buyer's partner law enforcement agencies will carry out the initial stopping of vehicles;
- 5.12 The Buyer will be the detaining agent at all times and the Supplier will not be expected to engage with the vehicle owners/operators and must pass all queries on to the Buyer;
- 5.13 The Supplier will operate the Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year during the contract term;
- 5.14 The Supplier must provide a point of contact to ensure that all call out requests are handled effectively and within the agreed timescales;
- 5.15 The Supplier must respond to the Buyer within 20 minutes of the call out request being initiated and ensure the secure recovery and storage for all detained HGV;
- 5.16 The Supplier must attend the collection site within two (2) hours of the initial call out request (traffic and time permitting);
- 5.17 On arrival at the designated collection site, the Supplier shall complete [REDACTED] "Condition Report" as set out in Appendix 1. The Supplier shall ensure the document is fully completed and countersigned by the Buyer prior to transporting the vehicle to storage;
- 5.18 The Supplier is required to attend whichever location the vehicle is held with either a driver to drive the vehicle to the Supplier's secure detention facility or an appropriate vehicle to tow the held vehicle to the Supplier's facility if it is not deemed roadworthy;
- 5.19 If any incidents or delays occur during the detention process, the Supplier must inform the Buyer representative as soon as reasonably possible. In the event where the time agreed cannot be met, the Supplier must provide regular update/progress to the Buyer by telephone call and/or email every, one (1) hour.
- 5.20 The Supplier shall ensure at the end of detention, any request for vehicle release is processed in accordance with the Buyer's release order instructions.
- 5.21 The Supplier shall provide valuation/appraisal of detained vehicles as and when required by the Buyer.
- 5.22 The table below outlines the end-to-end detention process and associated requirements for the Services and details the typical stages the Supplier will be required to manage and deliver. These requirements are indicative of the services required under this contract.

Stage	Process	Description
1	Call out requests	<ul style="list-style-type: none"> <li>Communicate using a mutually agreed method between the Buyer and the Supplier;</li> <li>The Supplier to provide a written reference number or written confirmation for each call out request;</li> <li>The Buyer will give full details of the vehicle and vehicle owner including; <ul style="list-style-type: none"> <li>Class</li> <li>Registration</li> <li>Make</li> <li>Model</li> <li>Colour</li> <li>Fuel Type</li> <li>Transition Type</li> <li>Driver Name</li> <li>Owner Name</li> <li>Company Name</li> <li>Company Address</li> <li>Company Contact Number</li> <li>Any trailer that may be attached</li> <li>Whether the vehicle is drivable</li> </ul> </li> <li>If the vehicle is drivable, the Supplier shall send two (2) representatives to collect the vehicle;</li> <li>If the vehicle is not drivable the Supplier shall send one (1) representative with a suitable towing vehicle to collect;</li> <li>Supplier to confirm expected collection time from point of origin.</li> </ul>
2	Start of detention	<ul style="list-style-type: none"> <li>The Buyer and Supplier will visually inspect the vehicles conditions and complete the <span style="background-color: black; color: black;">[REDACTED]</span> Condition Report;</li> <li>Both parties must ensure that the <span style="background-color: black; color: black;">[REDACTED]</span> Condition Report is fully completed, countersigned and shared between each party prior to transporting the vehicle to storage;</li> <li>The Supplier shall transport the vehicle to the Supplier's nearest detention facility that is available. In the event that the detention facility is not in Kent, the</li> </ul>

		Buyer may request for the vehicle to be transported to a detention facility near Dover at any stage thereafter.
3	During detention (Storage)	<ul style="list-style-type: none"> <li>The Supplier shall ensure that the vehicle is stored in a secure location in accordance with paragraph 5.23;</li> <li>The Supplier shall store the vehicle in an appropriate and adequate environment to maintain its condition and provide daily updates of the detained vehicles.</li> </ul>
4	End of Detention	<ul style="list-style-type: none"> <li>The Buyer will issue a release order to the Supplier, specifying the necessary instructions for the Supplier to follow to release the detained vehicle.</li> <li>The Supplier shall provide written confirmation that a detained vehicle has been released.</li> </ul>

5.23 The Supplier shall provide storage facilities that adhere to the following security measures:

5.23.1 secure perimeter fencing with gates, 24/7 CCTV monitoring and recording, and sufficient guarded entry controls to ensure only authorised personnel are allowed access;

5.23.2 alarmed against intrusion;

5.23.3 provision of adequate security lighting to enhance visibility during low-light conditions to deter potential security threats;

5.23.4 have adequate procedures and appropriately qualified security personnel in place to monitor the premises and respond to security incidents promptly;

5.23.5 have adequate fire safety and fire suppression procedures, systems and equipment in place in any premises, and in any event in accordance with Good Industry Practice;

5.23.6 ensure that the premises meet all necessary legal requirements; and

5.23.7 The Supplier is required to be ISO 27001:2022 accredited or be able to demonstrate that they are working towards this or an equivalent industry standard.

5.24 The Supplier shall permit the Buyer to visit the Supplier's premises within two (2) weeks prior to Contract Award to verify the secure detention facilities for assurance purposes. The Buyer reserves the right to use Appendix 2: Buyer Inspection of Supplier Premises Checklist during the visit to assess compliance and suitability for assurance purposes and to exclude the Supplier if on inspection the facilities do not meet the requirements.

**6. KEY MILESTONES AND DELIVERABLES**

6.1 The following Contract milestones/deliverables shall apply:

<b>Milestone/ Deliverable</b>	<b>Description</b>	<b>Timeframe or Delivery Date</b>
1	The Supplier shall permit the Buyer to visit the Supplier's premises to verify the secure detention facilities.	Within two (2) weeks prior to Contract Award.
3	The Supplier to ensure staff have been vetted and hold the required level of Security Clearance. The Supplier to provide confirmation that vetting has been completed.	Two (2) weeks prior to Contract Start Date.
4	The Supplier will be required to mobilise their solution and ensure a smooth transition period by Contract Start Date.	17 February 2025
5	The Supplier to agree with the Buyer on the content and format, structure, timeline, and submission details of the Management Information report	Within ten (10) days of Contract Start Date
6	To attend quarterly contract review meetings with Border Force	Quarterly

**7. MANAGEMENT INFORMATION/REPORTING**

7.1 The Supplier shall provide management information as required by the Buyer based on the reporting format, content, structure, timeline, and submission details agreed by the Buyer in line with the KPIs to support the performance management of the contract.

7.2 The structure, format and content, timeline, and submission details of the Management Information report shall be agreed between the parties within ten (10) days of the Contract Start Date.

7.3 The Supplier shall provide daily updates on detained vehicles, which includes but is not limited to:

7.3.1 Storage location;

7.3.2 Make Model/colour;

7.3.3 Registration number;

7.3.4 Job/Order number; and

7.3.5 Duration of storage.

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7.4 The Supplier shall produce and submit (via email) a monthly Management Information report to the Buyer, which includes but is not limited to:

7.4.1 Service delivery:

- 7.4.1.1 Volume of call out requests
- 7.4.1.2 Response time for call out requests
- 7.4.1.3 Condition reports of vehicles upon collection, and admission to storage
- 7.4.1.4 Any specialist vehicle or equipment used
- 7.4.1.5 Collection of detained vehicles including details of any delays incurred;
- 7.4.1.6 Volume of vehicles in storage
- 7.4.1.7 Duration of storage for each vehicle (average and maximum)
- 7.4.1.8 Volume of vehicles released from storage
- 7.4.1.9 reporting on feedback and complaints received around service delivery, status of complaint and action plan to resolve

7.4.2 Service Levels and Performance;

- 7.4.2.1 KPI data & summary statistics including summary of all KPI failures that occurred during the month and whether any of these are Repeat KPI failures
- 7.4.2.2 Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate
- 7.4.2.3 Sustainability reporting: As proportionate and relevant to this contract, the Supplier shall provide measured progress on climate change adaptation, mitigation, and sustainable development, including performance against carbon reduction management plans.

7.4.3 Financials to include;

- 7.4.3.1 Forecast spend vs actual spend
- 7.4.3.2 Invoices submitted to the Buyer

7.4.4 Trends and analysis;

- 7.4.4.1 Comparison of current month's performance with previous months
- 7.4.4.2 Analysis of any factors impacting performance

7.4.5 Risks and Issues identified;

- 7.4.5.1 Plans to mitigate



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7.5 In addition to all Data Protection and Security requirements in the Contract, the Supplier shall keep and maintain full and accurate records and accounts on everything to do with the contract for seven (7) years after the date of expiry or termination of the contract and in accordance with the UK GDPR or the EU GDPR.

## 8. VOLUMES

8.1 The number of vehicles detained under the Civil Penalty regime varies, which is why flexibility is a requirement. Based on historic figures, the Supplier may expect to deal with fifty (50) to hundred (100) detentions per calendar year; it is important that the Supplier is aware that this figure could increase due to recent legislative changes. The majority of detentions are likely to be short term (less than 72 hours).

## 9. CONTINUOUS IMPROVEMENT

9.1 The Supplier shall continually seek to improve the way in which the required Services are to be delivered throughout the Contract duration.

9.2 The Supplier should present any identified new ways of working to the Buyer during quarterly Contract review meetings.

9.3 Changes to the way in which the Services are to be delivered must be brought to the Buyer's attention and agreed prior to any changes being implemented.

## 10. SUSTAINABILITY

10.1 In 2020, the Procurement Policy Note (PPN) 06/20 was launched which embedded a new model to deliver social value through Central Government's commercial activities. Central Government Buyers shall use this model to take account of the additional social benefits that can be achieved in the delivery of its contracts, using policy outcomes aligned with the government's priorities.

10.2 Social value has a lasting impact on individuals, communities and the environment. Government has a huge opportunity and responsibility to maximise benefits through its commercial activity.

10.3 The Buyer shall apply Social Value Theme 3: Fighting Climate Change and the Supplier is required to contribute to minimising environmental impacts and deliver additional environmental benefits in the performance of the contract, including working towards net zero greenhouse gas emissions.

10.4 Further information on the Social Value commitment can be found at this link: <https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts>.

## 11. QUALITY

11.1 The Supplier must be able to meet all necessary insurance requirements and demonstrate storage site security standards.

11.2 The Supplier must be compliant to ISO 9001:2015 Quality Management Systems throughout the life of the contract or be working towards attaining this standard.

11.3 The Supplier shall continuously monitor the quality-of-service delivery and report the outcomes to the Buyer.

## **12. PRICE**

12.1 The price structure shall be fixed for the duration of the contract.

12.2 The Supplier shall complete and submit the Financial Pricing Model, which is attached within the Jaggaer event. The Supplier shall ensure that they complete the Financial Pricing Model accurately as it will form part of the contract if the Supplier is successful with their Proposal.

## **13. STAFF AND CUSTOMER SERVICE**

13.1 The Supplier shall provide a sufficient level of resource throughout the duration of the contract in order to consistently deliver a quality service, with a specified point or points of contact for the Buyer to liaise with.

13.2 The Supplier Staff assigned to the contract shall have qualifications and experience of driving, recovery, and storage of HGVs to deliver the Contract safely and securely to the required standard.

13.3 The Supplier shall ensure that all Staff assigned to the Contract are suitably trained and possess appropriate vehicle licences to drive the provided vehicles.

13.4 The Supplier shall ensure that Staff understand the Buyer's objectives and will provide excellent customer service to the Buyer throughout the duration of the contract.

## **14. SERVICE LEVELS AND PERFORMANCE**

14.1 The Buyer shall measure the quality of the Supplier's delivery as follows:

14.1.1 The Supplier must facilitate any detention required by the Buyer in line with the scope of the requirement laid out at section 5.

14.1.2 Key Performance Indicators (KPIs) will serve as a benchmark for assessing the Supplier's effectiveness in fulfilling the Service requirements set by the Buyer.

14.2 During the Contract term, the following Key Performance Indicators (KPIs) will be in effect. Failure to meet these KPIs will trigger the Service Credit Regime outlined in Annex 7- Service Credit Regime of the Short Form Contract.



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KPI	Service Level Area	KPI/SLA description	How Measured	Target
1	Call out response time	The Supplier shall respond to calls and emails for vehicle detention and release within 20 minutes of the initial request in accordance with paragraph 5.15 of the Specification.	Number of calls and emails responded to within the 20 minutes timeframe as a percentage of the total number of calls and emails.	100%  Measured monthly
2	Start of detention	The Supplier shall attend site following any request for vehicle detention within two (2) hours of the initial call out request in accordance with paragraph 5.16 of the Specification.	Agreed response time missed as a percentage of the total number of calls and emails logged for on-site attendance that require vehicle detention.	100%  Measured monthly
3	During Detention (storage)	The Supplier shall ensure that detained vehicles are stored securely and kept in the same condition as described in the <span style="background-color: black; color: black;">XXXXXXXXXX</span> Condition Report in accordance with paragraph 5.17 of the Specification.	Percentage of compliance with secure storage requirements.	100%  Measured monthly
4	Paperwork/vehicle details request	If the Buyer requests any documentation relating to a detained vehicle the Supplier shall provide that documentation within 24 hours (not including weekends & public holidays)	Count number of instances late documentation.	100%  Measured monthly
5	Management Information	Management Information reports must be submitted in accordance with the Buyer's requirements in accordance with section 7 of the Specification.	Count number of instances documentation is received late.	100%  Measured monthly

## 15 SECURITY AND CONFIDENTIALITY REQUIREMENTS

- 15.1 The Supplier shall provide a secure detention facility, covered by all relevant insurances and procedures.
- 15.2 The Supplier shall comply with the provisions of the Short Form Contract security requirements and HMG Security Policy Framework (SPF) throughout the lifetime of the contract via this link <https://www.gov.uk/government/collections/government-security>.
- 15.3 The Supplier shall be bound by their Non-Disclosure Agreement (NDA), ensuring confidentiality of any sensitive information shared under this contract.
- 15.4 The Supplier shall not discuss detentions made on behalf of the Buyer with any other party, unless directed to do so by the Buyer in writing.
- 15.5 The Supplier shall ensure staff assigned to the contract have undertaken and successfully passed at least the Baseline Personnel Security Standard (BPSS) or equivalent vetting process.

## 16 PAYMENT AND INVOICING

- 16.1 the Supplier shall submit invoices as per the Order Form for the provision of services (subject to the deduction of any applicable service credits in Annex 7 - Service Credit Regime).
- 16.2 Payment can only be made following satisfactory delivery of pre-agreed deliverables.
- 16.3 In addition to the invoicing requirements in the Contract, each invoice must include the following detailed breakdown of work completed and the associated costs:
- 16.3.1 The Supplier shall ensure the invoice contains the following information:
    - 16.3.1.1 Date and time during which the Services detailed on the invoice were performed, corresponding to each of the Charges listed on the invoice;
    - 16.3.1.2 a description of the Services; including
    - 16.3.1.3 the Service Period to which the relevant Charge(s) relate;
    - 16.3.1.4 the pricing mechanism used to calculate the Charges (such as fixed Price, charges for additional hours etc); and
    - 16.3.1.5 details of any service credits that shall apply to the Charges detailed on the invoice.



**APPENDIX 2: BUYER INSPECTION CHECKLIST FOR SUPPLIER PREMISES****1. INTRODUCTION**

- 1.1 The purpose of the site visit is to enable the Buyer to gain a level of assurance with regards to the security of stored and detained HGV throughout the lifetime of the contract as set out in the Specification.
- 1.2 The Buyer inspection of the Supplier premises will take place during the Due Diligence Stage. The Supplier will be informed of the Buyer's intention to conduct an inspection of their premises, following the review of the Proposal responses as set out in the Request for Proposal document pack.
- 1.3 In the event that the Supplier storage facilities do not meet the requirements as set out in the Specification, the Buyer may, at its sole discretion decide not to take the Proposal forward.
- 1.4 The requirements specified within this checklist document are the same requirements detailed in Annex 2: Specification of the Contract included within the Request for Proposal (RFP) document pack.
- 1.5 The site visit inspection will be conducted by the Buyer's Border Force Clandestine Entrant Civil Penalty Team (CECPT) & the Buyer's Commercial team. The Supplier will be required to provide access and facilitate the site visit of their storage facilities.
- 1.6 The checklist below will be used to verify the Supplier Proposal response and to validate that the Supplier storage facilities meet the requirements.
- 1.7 If the Supplier receives one (1) or more "No" responses to any questions, the Buyer may, at its discretion decide not to take the Proposal forward.

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2. Requirements: The Supplier shall provide secure perimeter fencing with gates

## 2. Secure Perimeter Fencing and Access Controls

Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Is the perimeter fencing secure and in good operational condition?				
2	Are the gates secure and operational?				
3	Are there sufficient guarded entry controls to ensure only authorised personnel are allowed access?				
4	Are the entry controls functioning as intended?				

**Comments:**

**Opportunities for Improvements:** Provide recommendations for process improvements.

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**3. Requirements:** The supplier shall provide 24/7 CCTV monitoring and recording

### 3. CCTV Monitoring and Recording

Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Are all areas of the premises covered?				
2	is the recording system fully operational?				
3	Are all areas of the premises covered?				
4	Are the recordings stored securely and accessible only to authorised personnel?				

#### Comments:

#### Opportunities for Improvements: Provide recommendations for process improvements.

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4. Requirements: The Supplier shall provide alarm systems against intrusions

**4. Alarm System**

Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Are there intrusion alarms installed on the premises?				
2	Are the alarms operational?				
3	Does the alarm system cover all entry points?				
4	Are there any procedures in place for responding to alarms?				

**Comments:****Opportunities for Improvements:** Provide recommendations for process improvements.



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5. Requirements: The Supplier shall provide provision of adequate security lighting to enhance visibility during low-light conditions to deter potential security threats

### 5. Security Lighting

Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Is there adequate security lighting in place to enhance visibility during lowlight conditions?				
2	Are all areas of the premises well-lit to deter potential security threats?				
3	Are the lighting fixtures maintained and functional?				

### Comments:

**Opportunities for Improvements:** Provide recommendations for process improvements.



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6. Requirement: The supplier shall have adequate procedures and appropriately qualified security personnel in place to monitor the premises and respond to security incidents promptly.

6. Security Personnel and Procedures					
6a. Security Procedures					
Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Are there adequate security procedures in place to monitor premises?				
2	Are the security procedures documented and accessible to all relevant personnel?				
6b. Security Personnel					
Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Are the security personnel appropriately qualified and trained to respond to security incidents promptly?				
2	Are the security guards adequately trained and aware of their roles and responsibilities?				
3	Are background checks conducted on staff personnel and contractors who have access to our assets?				
Comments:					
Opportunities for Improvements: Provide recommendations for process improvements.					

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7. Requirements: The supplier shall have adequate fire safety and fire suppression procedures, systems and equipment in place in any premises, and in any event in accordance with good industry practice

### 7. Fire Safety and Suppression

Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Are there adequate fire safety procedures in place?				
2	Are there fire suppression systems adequate and operational?				
3	Are fire extinguishers, alarms, and sprinklers regularly inspected and maintained?				

### Comments:

### Opportunities for Improvements: Provide recommendations for process improvements.

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**8. Requirements:** The supplier shall ensure that the premises meet all necessary legal requirements

### 8. Legal Requirements

Reference	Questions	Findings			Supplier Proposal Response
		YES	NO	N/A	
1	Do the Supplier's premises meet all necessary legal requirements?				
2	Are there regular audits to ensure compliance with legal standards?				

### Comments:

### Opportunities for Improvements: Provide recommendations for process improvements.

**VII. Annex 3 – Charges****1. Pricing Details**

1.1. The price for the Services is split into two categories:

1.1.1. HGV Collection; and

1.1.2. HGV Storage.

1.2. All Charges shall be fixed price pricing mechanism and the rates set out in the Financial Pricing Model shall be used to calculate the relevant Charges.

1.3. The rates below shall be subject to increase by way of Indexation in accordance with paragraph 5 (When the Supplier can ask to change the Charges).

Table 1: Recovery and storage rates of detained vehicles

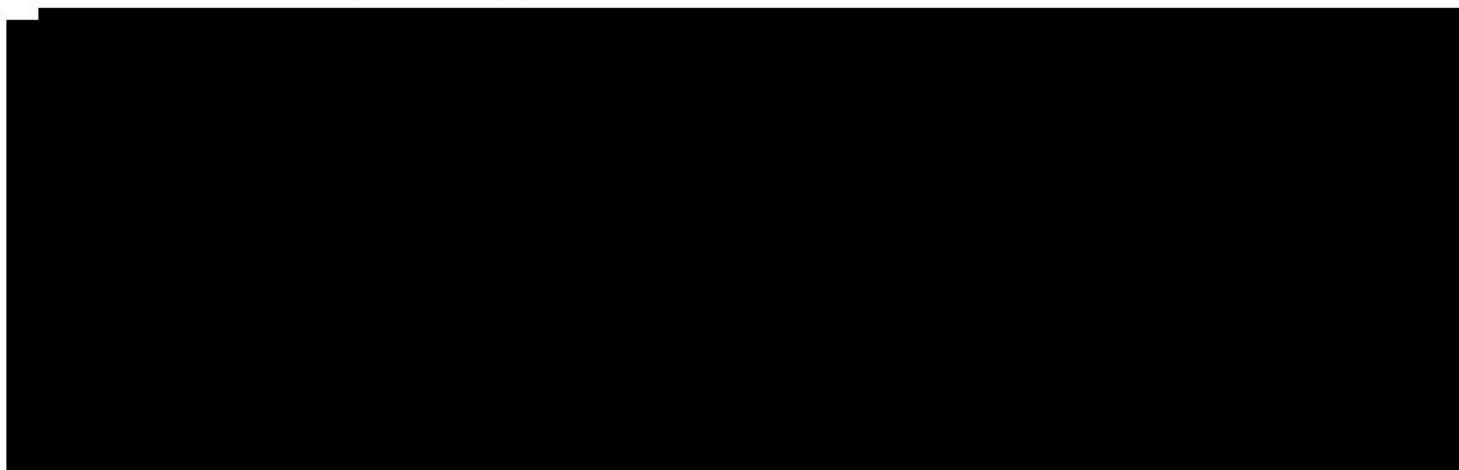
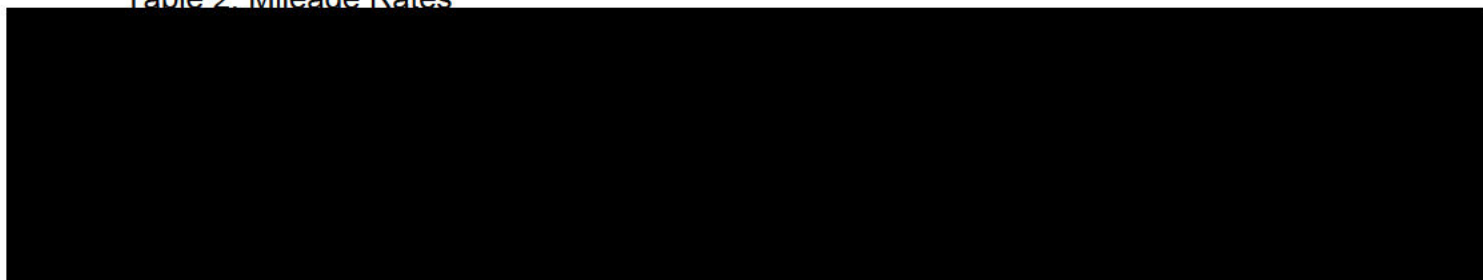
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Table 2: Mileage Rates

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1.4. The rates set out in paragraph 1.3 shall be taken from the Supplier Financial Pricing Model and be used to calculate recovery and storage charges for a detained vehicle.

1.5. The costs shall be calculated by applying the Supplier input of base costs plus mark-up.

1.6. VAT

All prices contained within the Annex 3 (Charges) are exclusive of VAT.

**2. How Charges are calculated**

2.1. The Charges:

2.1.1. shall be calculated in accordance with the terms of this Annex; and

2.1.2. cannot be increased except as in accordance with this Annex.



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2.2. Any variation to the Charges payable under the Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Annex.

### **3. The pricing mechanisms**

3.1. The pricing mechanisms and prices set out in Paragraph 1 shall be available for use in calculation of Charges in the Contract.

### **4. Are Costs and Expenses included in the Charges?**

4.1. Except as expressly set out in Paragraph 5 below, or otherwise stated in the Order Form, 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:

4.1.1. 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

4.1.2. costs incurred prior to the commencement of the Contract.

### **5. When the Supplier can ask to change the Charges**

5.1. The Charges shall remain fixed for the first contract year and shall be subject to review for any subsequent period in accordance with the following provisions:

5.1.1. Where the Charges are stated to be "subject to Indexation" they shall be adjusted in line with changes in the Consumer Price Index ("CPI") as published by the Office for National Statistics;

5.1.2. All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier;

5.1.3. The first Indexation review date shall be the first day of the month of the second contract year and subsequent review dates shall be each anniversary of this date thereafter.

5.1.4. CPI Indexation shall be calculated in accordance with the following formula:

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- 5.2. For the avoidance of doubt, the optional extension year(s) shall be based on the Charges and shall be indexed in accordance with the provisions of this paragraph.
- 5.3. For all changes other than those in respect of indexation, the Supplier shall give the Buyer at least three (3) months' notice in writing prior to the relevant review date. If the Supplier does not give sufficient notice, then it will only be able to request a change prior to the subsequent review date.
- 5.4. Any notice requesting an increase shall include:
- 5.4.1. a list of the Charges to be reviewed;
  - 5.4.2. for each of the Charges under review, written evidence of the justification for the requested change including:
    - 5.4.2.1. a breakdown of the profit and cost components that comprise the relevant part of the Charges;
    - 5.4.2.2. details of the movement in the different identified cost components of the relevant Charge;
    - 5.4.2.3. reasons for the movement in the different identified cost components of the relevant Charge;
    - 5.4.2.4. evidence that the Supplier has attempted to mitigate against any increase in the relevant cost components; and
  - 5.4.3. evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Contract Commencement Date
- 5.5. The Buyer shall consider each request for a price increase. The Buyer may grant approval to an increase at its sole discretion.
- 5.6. Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant review date or such later date as the Buyer may determine at its sole discretion and Annex 3 shall be updated accordingly.

## **6. Other events that allow the Supplier to change the Charges**

- 6.1. The Charges may also be varied by the Supplier due to:
- 6.1.1. a review in accordance with insurance requirements in Clause 17
  - 6.1.2. a request from the Supplier, which it can make at any time, to decrease the Charges







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## **IX. Annex 5 – Optional IPR Clauses**

***Not Used.***

**X. Annex 6 – Insurance Requirements****Third Party Public and Products Liability Insurance****1 Insured**

1.1 The Supplier

**2 Interest**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Contract.

**3 Limit of indemnity**

3.1 Not less than **£[10,000,000]** in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but **£[10,000,000]** in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

**4 Territorial limits**

United Kingdom

**5 Period of insurance**

5.1 From the Start Date to the Expiry Date and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

**6 Cover features and extensions**

6.1 Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third-party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

6.2 Contingent motor liability.

6.3 Health and Safety at Work Act(s) clause.

6.4 Data Protection Act clause.

6.5 Defence, appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide act.

**7 Principal exclusions**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any

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contract entered into by the Insured.

- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
  - 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
  - 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 8 Maximum deductible threshold**
- 8.1 Not to exceed £[NIL] for each and every vehicle own damage (third party death, injury and property damage claims to be paid in full).

**COMPREHENSIVE MOTOR INSURANCE****1 Insured**

1.1 The Supplier

**2 Interest**

2.1 Loss of or damage to any insured vehicle by any cause not excluded.

2.2 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in respect of death of or bodily injury to any person (excluding the person driving the insured vehicle) and damage to third party property arising out of an accident in connection with the use of an insured vehicle in connection with this Contract.

**3 Insured vehicle**

3.1 Any vehicle in the care, custody and control of the insured in connection with this Contract.

**4 Permitted driver**

4.1 Any person who is driving on the order or with the permission of the Insured provided that the person driving holds a valid licence to drive the vehicle

**5 Limitation of use**

4.1 Business use of the insured in connection with this contract

**6 Limit of indemnity**

6.1 Insured vehicles – market value

6.2 Unlimited indemnity for death or injury

6.3 Not less than **£[5,000,000]** in respect of any one occurrence, the number of occurrences being unlimited per annum in relation to third party property damage.

**7 Territorial limits**

United Kingdom

**8 Period of insurance**

8.1 From the Start Date to the Expiry Date and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

**9 Cover features and extensions**

9.1 Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

**10 Principal exclusions**

10.1 War and related perils.

10.2 Nuclear and radioactive risks.

**11 Maximum deductible threshold**

11.1 Not to exceed **£ [NIL]** for each and every vehicle own damage (third party death, injury and property damage claims to be paid in full).

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**UNITED KINGDOM COMPULSORY INSURANCES**

The Supplier shall meet its insurance obligations under applicable Law in full.

**XI. Annex 7 – Service Levels****1. Definitions**

1.1 In this Annex, the following definitions shall apply, and they shall supplement Short form Terms (“Conditions”):

<b>“Critical Service Failure”</b>	means the failure of the Supplier to provide the Services above the Service Level Thresholds identified within Appendix I of this Annex such that the Supplier may be considered in breach of this Contract; and which is subject to one or more of the remedies in, paragraph 4 of this Annex;
<b>“KPI”</b>	the key performance indicators set out in Appendix I of this Annex;
<b>“Repeat Failure”</b>	supplier fails to achieve the Service Level Performance Target for two (2) consecutive Service Periods;
<b>“Service Credit Cap”</b>	██████ of the monthly Service Charges;
<b>“Service Level”</b>	means any service levels applicable to the provision of the Deliverables under the Contract;
<b>“Service Level Failure”</b>	means a failure to meet the Service Level Performance Target in respect of a Service Level;
<b>“Service Level Performance Target”</b>	shall be as set out against the relevant Service Level in Appendix I of this Annex
<b>“Service Level Threshold”</b>	shall be as set out against the relevant Service Level in Appendix I of this Annex;
<b>“Service Period”</b>	means service period is one (1) month

## 2. Service Credit Regime

- 2.1 To ensure the Buyer receives timely and effective delivery of Services, a service credit regime will apply.
- 2.2 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Target for each Service Level.
- 2.3 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Appendix I of this Annex including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Target.
- 2.4 The Supplier shall send Management Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Management Information/Reporting in the Specification.
- 2.5 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
  - 2.5.1 the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or
  - 2.5.2 the Service Level Failure:
    - a) exceeds the relevant Service Level Threshold;
    - b) has arisen due to a Prohibited Act or wilful Default by the Supplier;
    - c) results in the corruption or loss of any Government Data; and/or
    - d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
  - 2.5.3 the Buyer is also entitled to or does terminate this Contract pursuant to Clause 11 of the Short form Terms (Ending The Contract).
- 2.6 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Target in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
  - 2.6.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
  - 2.6.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
  - 2.6.3 there is no change to the Service Credit Cap.

### 3. Service Levels and Performance Failure:

If the level of performance of the Supplier:

- 3.1 is likely to or fails to meet any Service Level Performance Target; or
- 3.2 is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 3.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- 3.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 3.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or
- 3.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

### 4. Service Credits

- 4.1 The Buyer shall use the Management Information reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 4.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Appendix I of this Annex.
- 4.3 For the purposes of calculating the Service Credit for any Service Periods where the Supplier does not charge a Service Charge, the Buyer will use the next Service Charge due to calculate any Service Credit.
- 4.4 Any Service Credits accrued during the period detailed at 4.3 will be deducted from the next Service Charge invoice.

### 5. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

- 5.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 5.2 the Buyer shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),
- 5.3 provided that the operation of this Paragraph 5 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.



## **6. Additional Rights if Service Level Threshold Exceeded**

- 6.1 If the Suppliers performance against a Service Level results in a Service Level Failure, that exceeds the Service Level Threshold, then the Buyer shall be entitled to treat that Service Level Failure as if it were a Critical Service Level Failure.

## **7. Repeat Failures**

- 7.1 If the Supplier fails to achieve the Service Level Performance Target for two (2) consecutive Service Periods, the second such failure shall be a "Repeat Failure". Any subsequent failure by the Supplier to achieve that same Service Level Performance Measure shall also be a Repeat Failure.









## **XII. Annex 8 - Commercially Sensitive Information**

### **1. What is the Commercially Sensitive Information?**

- 1.1 In this Annex the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which may be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Confidential Information will cease to fall into the category of Confidential Information to which this Annex applies in the table below.

<b>No.</b>	<b>Date</b>	<b>Item(s)</b>	<b>Duration of Confidentiality</b>
	[insert date]	[insert details]	[insert duration]