



Schedule 1 - Order Form and Contract Conditions

Order Form

1. Contract Reference	TPPD3000	
2. Date	[Insert date on which the last party signs]	
3. Buyer	The Department for Transport (on behalf of the Secretary of State for Transport) Great Minster House 33 Horseferry Road London SW1P 4DR	
4. Supplier	CIRIA 124 City Road London EC1V 2 NX United Kingdom	
5. The Contract	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and any [Annex/Annexes]</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>	
6. Deliverables	Goods	None
	Services	As specified in Annex 1
7. Specification	The specification of the Deliverables is as set out in Annex 1.	



8. Term	<p>The Term shall commence on 17 October 2023</p> <p>and the Expiry Date shall be: 1 October 2024, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p> <p>The Buyer may extend the Contract for a period of up to 2 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.</p>
9. Charges	<p>The Charges for the Deliverables shall be as set out in Annex 2. The maximum value of this contract will be £60,000, excluding any VAT.</p>
10. Payment	<p>Suppliers must be in possession of a written purchase order (PO), before commencing any work under this contract. You must quote the aforementioned PO number on all invoices, and these must be submitted directly to:</p> <p>Accounts Payable, Shared Services arvato, 5 Sandringham Park, Swansea Vale, Swansea SA7 0EA</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact our Accounts Payable section:</p> <p>ssa.invoice@sharedservicesarvato.co.uk</p>
11. Buyer Authorised Representative(s)	<p>For general liaison your contact will be</p> <p>[REDACTED]@dft.gov.uk</p>



12.Address notices for	Buyer: The Department for Transport Great Minster House 33 Horseferry Road London SW1P 4DR Attention: [REDACTED] Email: [REDACTED]@dft.gov.uk	Supplier: CIRIA 124 City Road London EC1V 2 NX United Kingdom Attention: [REDACTED] Email: [REDACTED]@ciria.org
13.Key Personnel	Buyer: The Department for Transport Great Minster House 33 Horseferry Road London SW1P 4DR Attention: [REDACTED] Email: [REDACTED].browne@dft.gov.uk	Supplier: CIRIA 124 City Road London EC1V 2 NX United Kingdom Attention: [REDACTED] Email: [REDACTED]@ciria.org
14.Special Terms	<p>The content of this order form takes precedence over the terms and conditions of contract. As such, provision 5.6 of the DfT Contract Conditions is altered by the addition of the word “reasonable” in the following special term:</p> <ul style="list-style-type: none">- The buyer may retain or set off payment of any amount owed to it by the Supplier if reasonable notice and reasons are provided. <p>Provision 10.2 of the DfT Contract Conditions should be overridden by the following special term:</p> <ul style="list-style-type: none">- Any New IPR created under the Contract is owned by the Supplier. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the New IPR created under the Contract to enable it and its sub-licensees to both: <p>(a) receive and use the Deliverables;</p>	



	use the New IPR.
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Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer (<i>on behalf of the Secretary of State for Transport</i>)
Name: [REDACTED] CEO	Name: [REDACTED] DfT Commercial Relationship Manager [REDACTED]
Date: 17 October 2023	Date: 18/10/2023 [REDACTED]
Signature: [REDACTED]	Signature: [REDACTED]



Annex 1 – Specification of Requirements

Unlocking MMC Policy Programme: Workstream 1

1. Technical Requirements

Context

Accelerating how we embed Modern Methods of Construction (MMC) into government procurement and maximising its use across transport, will help to create the capacity and affordability DfT needs to deliver its infrastructure priorities [A key 2023-24 DfT Outcome Delivery Plan (ODP) risk].

To incentivise wider investment and unlock MMC policy, National Highways, HS2, Network Rail, East West Rail and TfL recommend de-risking MMC's Intellectual Property exploitation and closing the gaps in its industry guidance.

Alongside the DfT, these Lead Programme Partners are responsible for over £180bn of infrastructure investment and are already progressing a shared commitment to drive greater value for money from infrastructure delivery.

To achieve the above outcomes, the supplier must produce two publications, as specified in Workstreams 1a and 1b, supported by an appropriate series of engagement activities. Each publication should be provided in both Hard and Soft copy, include relevant and meaningful case studies on good practice, and be disseminated through a series of wider industry and national events, including but not limited to the national exhibitions which are supported by Buildoffsite.

The supplier will retain intellectual property rights over the two publications. The Department will, however, provided with a non-exclusive, perpetual, royalty free, irrevocable, transferable worldwide licence to use, change and sub-license this intellectual property. The supplier will also provide the Department with access to any future iterations of CIRIA's publications P3279 and P3280 as published in 2024 at no further cost, as well as the opportunity to input into any revision process.

This workstream must be completed by the supplier within a 12-month period following contract award, commencing on 12 October 2023 and terminating by the 1 October 2024 subject to delays through buyer cause or unforeseen circumstances.

Workstream 1a Objectives and Requirements

Workstream 1a aims to produce a national and industry wide publication endorsed by Government departments, ALBs and major infrastructure asset owners. This shall provide practical guidance for the development of construction practice and functional specifications, which reduce barriers to the design and production of products by the MMC industry.

This guidance will provide the infrastructure sector with an improved understanding of:

- The challenges / differences of approach for Offsite manufacture and MMC



- What to include in a functional specification and what should be omitted to avoid creating unintentional barriers
- Principles for defining functional requirements.
- The levels of detail required in tender documentation to incentivise and position constructors/suppliers/designers to transition from traditional construction practice.
- Routes for maximising the use of functional specifications across sectors.
- The trade-offs needed to provide Clients with the products they require while still allowing designers to be creative and suppliers to utilise the design work and product development within their existing portfolios.
- The MMC / Offsite lessons learned by past projects and where product development is already happening throughout the supply chain.
- The approaches used to share technical information and practice across industry and its sectors.

Annex I provides further details on the contents of the above guidance document.

Workstream 1b Objectives and Requirements

Workstream 1b aims to produce a National and industry wide publication endorsed by Government departments, ALBs and major infrastructure asset owners. This will provide practical guidance for improving protections for Intellectual Property exploitation to encourage wider MMC investment. It must help suppliers to safely innovate and exploit MMC in collaboration with clients and other supply chains.

The guidance will provide the infrastructure sector with an improved understanding of:

- Different types of MMC and Offsite IP which can be protected and how
- Which forms of MMC contracts should be used to encourage exploitation of IP
- How to decide whether MMC IP belongs to clients or designers / suppliers
- How project portfolios and programmes may benefit from different IP protection strategies
- How to encourage innovation through exploiting IP within and across different construction sub-sectors
- How and why different risk management strategies should be applied for MMC products and projects.
- How to overcome MMC and Offsite exploitation barriers and challenges
- The role of standards in enabling the development, and exploitation of MMC IP
- The role of accreditation / certification in bringing suitable, trusted, MMC / Offsite products to market.
- Lessons learned from past projects on the effective control and management of intellectual property to exploit MMC and Offsite solutions.
- Funding routes to incentivise wider exploitation of MMC and Offsite solutions

Annex II provides further details on the contents of the above guidance document.



2. Implementation and Deliverables

Unlocking MMC Policy Programme Milestones

To prepare the two Guidance documents, the Supplier will be expected to propose a schedule of milestone and engagement activities for the DfT's agreement at the inception of the contract. The Supplier will lead each of these Milestone activities. The following tables provide a high-level summary of the minimum number of steps / activities required:

Workstream 1a. Proposed steps to prepare guidance on the adoption of offsite manufacturing and MMC

Month End Milestone Date	Activity	% Payment Schedule
Oct 2023	Kick-off meeting	
Oct 2023	scope approved	
Oct 2023	virtual offsite manufacturers' workshop to discuss perceived challenges and good practice	25%
Nov 2023	virtual client only workshop to discuss perceived challenges and good practice	
Nov 2023	virtual designers' workshop to discuss perceived challenges and good practice	25%
Apr 2024	approve first draft contents of the guidance	25%
Jun 2024	Approval of final draft guidance	
Jul 2024	guidance peer reviewed	
Sep 2024	Final advisory group meeting approves guidance	25%
Autumn 24	publication prepared for soft and hard copy printing (Minimum No. 1 copy per member) National launch event for the Guidance publication	

Workstream 1b. Proposed steps to prepare guidance on improving protections for MMC Intellectual Property exploitation

Month End Milestone Date	Activity	% Payment
Nov 2023	Kick-off meeting	
Nov 2023	scope approved	



Nov 2023	Consultation on existing guidance and a Client Policy and Practitioner/supplier workshops to discuss perceived challenges and good practice	33%
March 2024	Project Steering Group agree draft guidance contents	33%
May 2024	guidance peer reviewed	
July 2024	Final advisory group meeting approves guidance publication	34%
Autumn 24	publication prepared for soft and hard copy printing (Minimum No. 1 copy per member) National launch event for the Guidance publication	

The existing DfT governance structures detailed in Section 5 of this Specification must be used to complete any formal Workstream output Approvals and / or Peer review Activities. The DfT Contract Manager will work closely with the Supplier to coordinate the DfT Group's expert and policy inputs, so there is effective cross-departmental sponsorship, support, oversight and scrutiny for this Workstream.

The DfT will work with the supplier to leverage the support of Government Departments, its Arm's Length Bodies and to share emerging policy insights. However, the Supplier is responsible for sourcing and drawing together the required programme inputs. This will include, but is not limited to the necessary expert advice, technical contents, drafters, publishers, and suitable platforms for dissemination etc.

Further details on the contributions of the Contracting Authority are given in Annexes I and II.

3. Performance Monitoring

All workstream outputs and delivery performance will be evaluated against the following criteria:

Quantity	The breadth and number of effective engagements and helpful contributions received from key stakeholders across the Construction and Infrastructure Sector. <i>[KPI: No of key organisational stakeholder views engaged, grouped by public and private sector]</i>
Quality	Feedback collated from partners, funders and stakeholders at each milestone (by the supplier) indicate endorsement of the programme activities and drafting by Government departments, ALBs and major infrastructure asset owners on the advisory group, Government Construction Board and / or MMC Steering Group.



	<p>These survey results indicate that the workstream is positioned to provide the practical guidance necessary:</p> <ul style="list-style-type: none">• 1. For improving protections for Intellectual Property exploitation;• 2. To encourage wider MMC investment; and• 3. For developing construction practice and functional specifications, which reduce barriers to the design and production of products by the MMC industry." <p><i>[KPI: Percentage of the funding bodies (i.e. Whitehall Departments, ALBs and Private Sector organisations) that endorse the programme activities and drafting as well positioned on advisory group, Government Construction Board and / or MMC Steering Group.]</i></p>
Timeliness	<p>Requirements must be met within a 12-month period, commencing on the 1st October 2023 and completing by the 1st October 2024 and against a list of milestone dates agreed between the Supplier and the Department at contract inception.</p> <p><i>[KPI: No. of Milestone Dates and Deliverables achieved to the required 'Quality' KPI above]</i></p>
Resolution	<p>Formal queries raised by the Contracting Authority are answered substantively to (or in advance of) agreed timescales (within 30 days).</p> <p><i>[KPI: No. of days difference between the agreed timeframe for resolving any formal query and the actual date of resolution.]</i></p>
Improvement	<p>The above requirements and enabling activities are elevated to such a quality level that the meaningful policy impacts of these Guidance documents are visible at a much earlier stage than would otherwise be expected.</p> <p><i>[KPI: Number of examples of early adoption of the guidance (i.e. new commitments made as a result of engagement activities; case studies involving the implementation of guidance prior to its publication)]</i></p>

4. Quality Assurance Requirements

Effective and high standard quality assurance is a fundamental requirement for all work carried out by the successful Supplier. The Supplier will be expected to agree a



schedule of consultation and peer review assurance processes to be completed (to the Department's satisfaction) at each contract milestone.

The quality of the Supplier's activities following award will be measured against the above Key Performance Indicators (KPI). The Client's Contract Manager will assess the Supplier's performance on a monthly basis and also provide a KPI return.

In addition, upon commencement of the work, the successful Supplier should compile a risk register and review this with the Client's Contract Manager at agreed intervals.

In the course of delivery, the Supplier must adhere to all relevant Government Guidance and Quality Standards, so that the Guidance Documents it produces may be published on the '.Gov' website.

This guidance is outlined in <https://www.gov.uk/government/collections/content-and-publishing-guidance-for-government>

Adherence to these standards will be monitored by undertaking independent scrutiny throughout the programme.

5. Service Conditions and Environmental Factors

In addition to the Supplier's own basic Governance structures, the DfT Contract Manager will coordinate the Department's broader expert and policy inputs, so this provides effective cross-departmental sponsorship, oversight and scrutiny for this Workstream, including formal Approvals and Peer Review. This will be achieved through DfT's existing Governance Structures and include the DfT-ALB Standards Collaboration Group.

Further Government scrutiny and oversight may be provided through the Cross-Whitehall Government Construction Board and its Cross-Whitehall MMC Steering Group. These engagements will be coordinated through the DfT Contract Manager and included with the Suppliers basic Governance Framework.

The Supplier will be required to:

- provide, at all times, the appropriate level of skills, resource and advice throughout the life of the work, bringing well-reasoned commercial acumen, noting that it is envisaged that the key skills and experience required for the services will typically be found in Senior Consultant level resources with some activities requiring support from Director resources;
- work flexibly and collaboratively with all parties, ensuring they can adopt and maintain a partnership approach;
- provide quality assured reports reflecting the requirements outlined in this document, present their findings and attend meetings as necessary; and



- raise and escalate significant or unresolved risks and issues to the appropriate level of authority within the supplier, up to and including Partners or Directors, and raise such risks and issues directly with the Authority's Client Contract Manager.

6. Data Protection

There are no requirements to process personal data within this Programme and so Schedule 8 is N/A.

However, if such requirements do arise, the successful Bidder will be accountable for all data protection ensuring the rights of individuals to personal information is collected and processed and is compliant at all times with the UK General Data Protection Regulation (GDPR).

The supplier is required to comply with all applicable requirements of the Data Protection Legislation (including the Law Enforcement Directive (Directive (EU) 2016/680), and all applicable Law about the processing of personal data and privacy).

7. Management and Contract Administration

The Supplier shall provide the Client's Contract Manager with regular monthly update reports against the above KPI themes on the progress of the work. The monthly update reports, will cover the following areas:

- a list of dependencies that the Supplier believes should be taken into account, but have not been identified in the product/service specifications and the proposed ownership;
- progress on agreed tasks;
- preparation for future tasks (to be agreed with the Contract Manager);
- forecast completion dates for phase activities;
- risks and issues impacting progress;
- task implementation plan; and
- the supplier fee spend on a Value of Work Done basis (schedule outline).

Financial / Budget Management updates will include;

- breakdown of spend against work products, including any project management costs;
- forecast spend (based on analysis of actual and forecast spend per month) breakdown against the project/activity; and
- a comparison between forecast spend and any agreed budget

Within these monthly reviews, the Supplier's progress will be assessed and the DfT will provide feedback and agree with the Supplier a timeline to address any issues.



KPI	Description
Quantity	No of key organisational stakeholder views engaged, grouped by public and private sector.
Quality	Percentage of the funding bodies (i.e. Whitehall Departments, ALBs and Private Sector organisations) that endorse the programme activities and drafting as well positioned.
Timeliness	No. of Milestone Dates and Deliverables achieved to the required 'Quality' KPI above.
Resolution	No. of days difference between the agreed timeframe (30 days) for answering substantively any formal query and the actual date of resolution.
Improvement	Number of the meaningful interventions made by the Supplier (i.e. establishing and leveraging new influential contacts and case studies) to assure the early adoption and beneficial impacts of the guidance.

8. Training / Skills / Knowledge Transfer

The Authority will seek to appoint a Supplier who can demonstrate the best value approach and a team with the appropriate skills, capability, and experience to deliver the workstream. Particular attention should be given to the approaches used to share technical information and practice across industry and its sectors and these are sufficient to incentivise the change in behaviours and wider investment needed to unlock MMC policy to create the capacity and affordability DfT needs to deliver its infrastructure priorities.

It is essential that the successful Supplier has the resource with the desired skills and experience to deliver this project. All delivery personnel sourced by the supplier must exhibit the following key skills and experience:

- Ability to build and sustain effective working relationships with the Partners, other key stakeholders and the wider sector;
- Considers views, perspectives and insight from across an appropriate range of stakeholders, and challenge assumptions, when preparing guidance and developing options for delivering successful outcomes;
- Ability to articulate 'the big picture' and cut through technical complexity – communicating technical concepts relating to Modern Methods of Construction (including Offsite) in a language understood by the whole sector, especially policymakers in Government;



- Ability to deliver against programme milestones, apply agile principles and work within a critical pathway spanning multiple dependencies and competing organisational Agenda
- Experience working with all types of organisations in the value chain, including the supply chain of the Partner organisations.
- Demonstrable experience publishing and disseminating effective national and industry wide guidance endorsed by either Government departments, ALBs or major infrastructure asset owners / industry sectors, etc., to improve the capability of the construction and infrastructure industry.

9. Arrangement for the End of the Contract

The Supplier will work with the Authority, providing evidence where required to complete an evaluation which will be reviewed following the completion of the workstream and delivery of the outputs. This will help to inform future research and/or training requirements and further collaboration to unlock MMC policy.



ANNEX I

Workstream 1a Objectives and Requirements

Guidance document to provide practical advice on developing construction practice and functional specifications, which reduce barriers to the design and production of products by the MMC industry.

The Supplier led working group is tasked with the production of guidance documentation to aid the development of Performance Specifications suitable for use across different sectors, but which can be specialised for DfT's disciplines.

The guidance should include:

- what should and what should not be in a performance specification
- the extent of detail to be included so as not to constrain the suppliers/designers
- any specific differences of approach between Offsite and MMC
- how the performance specification should be formatted and how it should be used
- where in the development process the performance specification should be produced and passed to the supply chain
- how the performance specification should consider the requirements of the Construction Playbook and the Construction 2025 Targets and other relevant DfT Infrastructure Policies

The DfT will provide the Supplier with the relevant DfT Infrastructure Policies and documents discussed above and a list of suitable contacts to assist with their interpretation.

A list of the minimum contents for the Workstream 1a Guidance document report is summarised below using the draft outline Contents Page (Expected Report size: approximately 110-120 pages), subject to approval by the advisory group:

Section A: Context

- What are performance specifications?
- Scope
- Benefits of using performance specifications
- Challenges
- Intellectual property and liability

Section B: Guidance

- Client domain*
- Designer domain
- Project domain*
- Product domain*



** EG safety, code compliance, strategic, value, plan of work phases, Interfaces, time related, acoustics, security, constraints, sites/utilities, logistics, circular economy, whole life cost and carbon, design life and resilience, design intent, (basis of design), tactical, practical, lessons, learnt, monitoring and control etc.*

Section C: Benchmarking

- Taking an holistic view
- Should cost models
- Feeds into value assurance benchmarking systems

Section D: Introducing innovations

- Intellectual property
- Testing and durability
- Certification
- Accreditation
- First adopter considerations*

** For platforms/systems, products of varying complexity and materials
Section E: Current best practice 18-27 (case studies)*

Appendix: Checklist

- Do's and don'ts



ANNEX II

Workstream 1b Objectives and Requirements

Guidance document for improving protections for Intellectual Property exploitation to encourage wider MMC investment.

The government's broader Intellectual Property Guidance was developed in close collaboration with the Intellectual Property office (IPO), the Department for Business and Trade (DBT) and Cabinet Office. This ensured the use of the most up to date language, noting in particular the move across to a 'plainer' English contract form.

For consistency, this Workstream's outputs must remain consistent with this high-level Government Guidance, using consistent terms, and where appropriate, cross-referencing the Government's terms, Conditions of Contract and existing DfT guidance notes. This will help to ensure the guidance lands well, is useable and gives confidence that it's in step with these other initiatives.

The DfT will provide the Supplier with the reference documents discussed above and a list of suitable contacts to assist with their interpretation.

A list of the minimum contents for the Workstream 1b Guidance document report is summarised below using the draft outline Contents Page (Expected Report size: approximately 40-50 pages), subject to approval by the advisory group:

- **Standard publication content – CIRIA publications team**
 - Copyright statement, authoring and editing team, advisory and peer review board
 - Contents and Abbreviations
 - Executive summary
- **Management of IP**
 - Foreword
 - Why managing IP is critical – to maximise the benefits and avoid the pitfalls
 - How developing a product or system is different to designing a unique building or facility
- **Typical Forms of IP and how may it be protected**
 - Trade secrets / non-disclosure / non-compete agreements
 - Collaboration agreements (for joint development / ownership)
 - Statutory (patents, copyrights, design rights, database rights etc) o Protecting digital rights (obfuscated code, block chain etc)
 - Insurance of IP
 - Background and foreground IP and the need to keep records of ideas being generated



- **Typical contractual arrangements for IP ownership in construction projects Vs product IP ownership and respective scopes of use**
 - Proprietary templates (NEC/JCT/FAC/TAC etc)
 - Background / foreground IP implications for commercialisation of products
 - Collaboration agreements (Lambert Kit etc)
 - Design authority (who is ultimately responsible and qualifications they need to have)
 - Product liability insurance
 - Other considerations
- **Commercial approaches**
 - Maximising benefits from use of IP across projects & sectors, exploiting the cost reduction learning curve
 - Incentivising manufacturers to develop or adopt IP
 - Enabling and / or incentivising project teams to use IP
 - Use of IP in competitive markets for public procurement projects
 - Potential pitfalls and strategies to avoid them
- **Risk management when developing product IP**
 - Considerations relating to design within a construction project or separately
 - Product & process FMEA / FMECA & testing
 - IP (product) deployment strategies (e.g. across project portfolios and programmes or market segments)
 - Procurement route risks to product deployment strategies
- **How standards may enable innovation and IP development**
 - General discussion
 - Product standards UKCA / CE marks / sector specific – certifications
 - A process-based example (e.g. BREEAM)
 - Material-based example (e.g. BSI PAS 8820:2016)
 - Product-based example (e.g. ISO standards for volumetric modules)
 - Systems based examples (e.g. Platform rule books)
- **Third party accreditations, insurance and finance**
 - BOPAS+ / NHBC Accepts
 - Financing projects adopting innovative IP
- **Case studies and Lessons Learnt**
 - Platform based designs
 - Open-source IP
 - Manufacturer or designer owned IP
 - Client owned designs
 - Shared IP

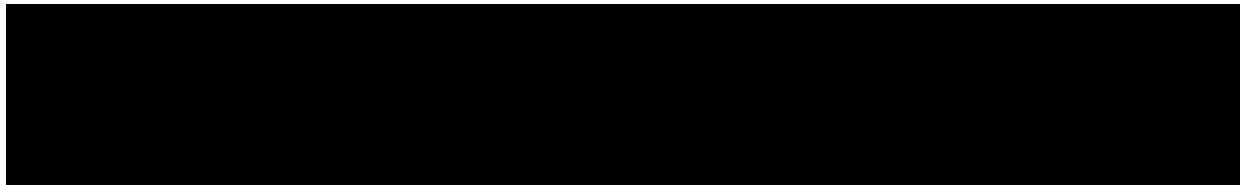
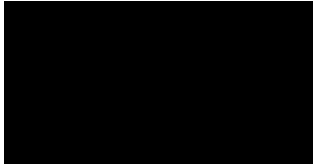


- **Conclusions**



Annex 2 – Charges

As set out in the enclosed document (alongside membership charges, covered by a separate contract, reference **TPPD3001**), and summarised in the below table:



The payment schedules for workstreams 1a and 1b are set out in the specifications for Workstream 1, included under Annex 1.



Contract Conditions

1. Definitions used in the Contract

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

"Buyer"	means the person identified in the letterhead of the Order Form;
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none">a) Government Department;b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c) Non-Ministerial Department; ord) Executive Agency;
"Charges"	means the charges for the Deliverables as specified in the Order Form;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contract"	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
"Controller"	has the meaning given to it in the UK GDPR;
"Date of"	means that date by which the Deliverables must be



"Delivery"	delivered to the Buyer, as specified in the Order Form;
"DPA 2018:"	Data Protection Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regs 2019 (as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regs 2020
"Data Protection Legislation"	(i) the UK GDPR as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; (iv) the EU GDPR where applicable to the processing.
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	has the meaning given to it in the UK GDPR;
"Data Subject"	has the meaning given to it in the UK GDPR;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deliver"	means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form, which shall include unloading and any other specific arrangements agreed by both parties. Delivered and Delivery shall be construed accordingly;
"Existing IPR"	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);



"Expiry Date"	means the date for expiry of the Contract as set out in the Order Form;
"FOIA"	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"Goods"	means the goods to be supplied by the Supplier to the Buyer under the Contract;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government Data"	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
"Information"	has the meaning given under section 84 of the FOIA;
"Information"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data



Commissioner"	privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
"New IPR"	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;
"Order Form"	means the letter from the Buyer to the Supplier printed above these terms and conditions;
"Party"	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the UK GDPR;
"Personal Data Breach"	has the meaning given to it in the UK GDPR;
"Processor"	has the meaning given to it in the UK GDPR;
"Purchase Order Number"	means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the



meaning set out for the term "request" shall apply);

"Services"	means the services to be supplied by the Supplier to the Buyer under the Contract;
"Specification"	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Storage Media"	means the part of any device that is capable of storing and retrieving data;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Term"	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended or terminated in accordance with the terms and conditions of the Contract;
"UK GDPR"	as given effect by Part 2 of the DPA 2018, as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2020.
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;



"Workers" any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (<https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>) applies in respect of the Deliverables;

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. Understanding the Contract

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 2.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

3. How the Contract works

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



4. What needs to be delivered

4.1 All Deliverables

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

4.2 Goods clauses

- (a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.
- (d) Risk in the Goods transfers to the Buyer on delivery, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within three Working Days of delivery.
- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.
- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- (i) The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects



that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.

- (k) The Buyer can cancel any order or part order of Goods which has not been delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- (l) The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- (m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its [sub-suppliers].

4.3 Services clauses

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.



- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (i) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

5. Pricing and payments

- 5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 5.2 All Charges:
 - (a) exclude VAT, which is payable on provision of a valid VAT invoice;
 - (b) include all costs connected with the supply of Deliverables.
- 5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 5.4 A Supplier invoice is only valid if it:
 - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
 - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 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 12.6. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 34.
- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier 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:
- (a) the Buyer cannot terminate the Contract under clause 11;
 - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
 - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
 - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 7.1 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
 - (b) demonstrates that the failure only happened because of the Buyer Cause;
 - (c) mitigated the impact of the Buyer Cause.

7. Record keeping and reporting

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action;
 - (c) provide a deadline for completing the corrective action.



- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
 - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

8. Supplier staff

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
 - (b) be vetted using Good Industry Practice and in accordance with the instructions issued by the Buyer in the Order Form;
 - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or



- (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

9. Rights and protection

9.1 The Supplier warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform the Contract;
- (b) the Contract is executed by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
- (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
- (g) it is not impacted by an Insolvency Event.

9.2 The warranties and representations in clause 10.1 are repeated each time the Supplier provides Deliverables under the Contract.

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

- (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
- (b) non-payment by the Supplier of any tax or National Insurance.

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

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

9.6 Supplier shall ensure it has adequate insurance cover for this contract



10. Intellectual Property Rights (IPRs)

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

- (a) receive and use the Deliverables;
- (b) use the New IPR.

10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs for the purpose of fulfilling its obligations under the Contract and a perpetual, royalty-free, non-exclusive licence to use any New IPRs.

10.3 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 11 or otherwise agreed in writing.

10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.

10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- (a) obtain for the Buyer the rights in clauses 11.1 and 11.2 without infringing any third party intellectual property rights;
- (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

11. Ending the contract

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

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



11.3 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated clause 12.5(b) to 12.5(g) applies.

11.4 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
 - (i) there's a Supplier Insolvency Event;
 - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
 - (v) if the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
 - (vi) the courts of the United Kingdom declares that the Contract should not have been awarded to the Supplier because of a serious breach of the Regulations;
 - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 12.5(b) to 12.5(g) applies.

11.5 What happens if the Contract ends

Where the Buyer terminates the Contract under clause 12.4(a) all of the following apply:



- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) 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;
- (g) the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35] and any clauses which are expressly or by implication intended to continue.

11.6 When the Supplier can end the Contract

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 12.6(a):
 - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
 - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
 - (iii) clauses 12.5(d) to 12.5(g) apply.

11.7 Partially ending and suspending the Contract

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.



- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 25) any necessary variation required by clause 12.7, but the Supplier may not either:
 - (i) reject the variation;
 - (ii) increase the Charges, except where the right to partial termination is under clause 12.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 12.7.

12. How much you can be held responsible for

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
 - (a) any indirect losses;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 12.3 In spite of clause 13.1, neither Party limits or excludes any of the following:
 - (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by law.
- 12.4 In spite of clause 13.1, the Supplier does not limit or exclude its liability for any indemnity given under clauses 4.2(j), 4.2(m), 8.5, 9.3, 10.5, 13.2, 14.26(e) or 30.2(b).
- 12.5 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 12.6 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers



13. Obeying the law

13.1 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:

- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;

- (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;

- (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;

- (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

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

13.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32

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

14. Data protection

14.1 The Buyer is the Controller and the Supplier is the Processor for the purposes of the Data Protection Legislation.

14.2 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with this Contract.

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

14.4 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every six Months.



- 14.5 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the security requirements specified [in writing] by the Buyer.
- 14.6 If at any time the Supplier suspects or has reason to believe that the Government Data provided under the Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Buyer and immediately suggest remedial action.
- 14.7 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier;
 - (b) restore the Government Data itself or using a third party.
- 14.8 The Supplier must pay each Party's reasonable costs of complying with clause 15.7 unless the Buyer is at fault.
- 14.9 Only the Buyer can decide what processing of Personal Data a Supplier can do under the Contract and must specify it for the Contract using the template in Annex 1 of the Order Form (*Authorised Processing*).
- 14.10 The Supplier must only process Personal Data if authorised to do so in the Annex to the Order Form (*Authorised Processing*) by the Buyer. Any further written instructions relating to the processing of Personal Data are incorporated into Annex 1 of the Order Form.
- 14.11 The Supplier must give all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment before starting any processing, including:
- (a) a systematic description of the expected processing and its purpose;
 - (b) the necessity and proportionality of the processing operations;
 - (c) the risks to the rights and freedoms of Data Subjects;
 - (d) the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.
- 14.12 The Supplier must notify the Buyer immediately if it thinks the Buyer's instructions breach the Data Protection Legislation.
- 14.13 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Buyer.



- 14.14 If lawful to notify the Buyer, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 14.15 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:
- (a) are aware of and comply with the Supplier's duties under this clause 14;
 - (b) are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
 - (c) 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 Buyer or as otherwise allowed by the Contract;
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 14.16 The Supplier must not transfer Personal Data outside of the UK unless all of the following are true:
- (a) it has obtained prior written consent of the Buyer;
 - (b) the Buyer has decided that there are appropriate safeguards (in accordance with Article 46 of the UK GDPR);
 - (c) the Data Subject has enforceable rights and effective legal remedies when transferred;
 - (d) the Supplier meets its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - (e) where the Supplier is not bound by Data Protection Legislation it must use its best endeavours to help the Buyer meet its own obligations under Data Protection Legislation; and
 - (f) the Supplier complies with the Buyer's reasonable prior instructions about the processing of the Personal Data.
- 14.17 The Supplier must notify the Buyer immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;



- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
- (f) becomes aware of a Data Loss Event.

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

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

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

14.20 The Supplier must maintain full, accurate records and information to show it complies with this clause 14. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Buyer determines that the processing:

- (a) is not occasional;
- (b) includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR;
- (c) is likely to result in a risk to the rights and freedoms of Data Subjects.

14.21 The Supplier must appoint a Data Protection Officer responsible for observing its obligations in this Schedule and give the Buyer their contact details.



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

- (a) notify the Buyer in writing of the intended Subprocessor and processing;
- (b) obtain the written consent of the Buyer;
- (c) enter into a written contract with the Subprocessor so that this clause 14 applies to the Subprocessor;
- (d) provide the Buyer with any information about the Subprocessor that the Buyer reasonably requires.

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

14.24 At any time the Buyer can, with 30 Working Days notice to the Supplier, change this clause 14 to:

- (a) replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under UK GDPR Article 42;
- (b) ensure it complies with guidance issued by the Information Commissioner's Office.

14.25 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office.

14.26 The Supplier:

- (a) must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
- (b) must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- (d) securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it;
- (e) indemnifies the Buyer against any and all Losses incurred if the Supplier breaches clause 15 and any Data Protection Legislation.



15. What you must keep confidential

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
- (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of clause 16.1, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
- (f) to its auditors or for the purposes of regulatory requirements;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis;
- (h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.

15.4 The Buyer may disclose Confidential Information in any of the following cases:



- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - (d) where requested by Parliament;
 - (e) under clauses 6.7 and 17.
- 15.5 For the purposes of clauses 16.2 to 16.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 16.
- 15.6 Information which is exempt from disclosure by clause 17 is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

16. When you can share information

- 16.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- (a) comply with any Freedom of Information Act (FOIA) request;
 - (b) comply with any Environmental Information Regulations (EIR) request.

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

16A. Transparency

- (1) The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time is not Confidential Information, except for –



(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and

(ii) Commercially Sensitive Information;

- (2) Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Buyer to publish to the general public this Contract in its entirety or parts of this contract thereof (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).
- (3) The Buyer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- (4) The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish.

17. Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

18. No other terms apply

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

19. Other people's rights in a contract

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

20. Circumstances beyond your control

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

- (a) provides written notice to the other Party;
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.



20.2 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

20.3 Where a Party terminates under clause 21.2:

- (a) each party must cover its own losses;
- (b) clause 12.5(b) to 12.5(g) applies.

21. Relationships created by the contract

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

22. Giving up contract rights

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

23. Transferring responsibilities

23.1 The Supplier cannot assign the Contract without the Buyer's written consent.

23.2 The Buyer can assign, novate or transfer 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 24.2 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 24.2 to a private sector body that is experiencing an Insolvency Event.

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

23.6 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

- (a) their name;
- (b) the scope of their appointment;
- (c) the duration of their appointment.



24. Changing the contract

- 24.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.

25. How to communicate about the contract

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 25.2 Notices to the Buyer or Supplier must be sent to their address in the Order Form.
- 25.3 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Preventing fraud, bribery and corruption

- 26.1 The Supplier shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
 - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 26.2 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 27.1 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 26.3 If the Supplier or the Staff engages in conduct prohibited by clause 27.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the



cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or

- (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

27. Equality, diversity and human rights

27.1 The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:

- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
- (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

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

28. Health and safety

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

- (a) all applicable law regarding health and safety;
- (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.

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

29. Environment

29.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

29.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

30. Tax

30.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including



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.

30.2 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 Off Contract, the Supplier must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
- (b) indemnify the 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 Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

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

- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 31.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with clause 31.2 or confirms that the Worker is not complying with those requirements;
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

31. Conflict of interest

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



- 31.2 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 31.3 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

32. Reporting a breach of the contract

- 32.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 14.1, or clauses 27 to 32.
- 32.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 33.1.

33. Resolving disputes

- 33.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 33.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 34.3 to 34.5.
- 33.3 Unless the Buyer refers the dispute to arbitration using clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
 - (a) determine the dispute;
 - (b) grant interim remedies;
 - (c) grant any other provisional or protective relief.
- 33.4 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 33.5 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 34.3, 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 34.4.

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

34. Which law applies

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